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# DIARY

OF

# THOMAS BURTON, ESQ.

&c. &c.

VOL. III.

LONDON:
PRINTED BY S. AND R. BENTLEY, DORSET-STREET.

# DIARY

1541

OF

# THOMAS BURTON, ESQ.

MEMBER IN THE PARLIAMENTS

OF

## OLIVER AND RICHARD CROMWELL,

FROM 1656 TO 1659:

NOW FIRST PUBLISHED

FROM THE

ORIGINAL AUTOGRAPH MANUSCRIPT.

WITH AN INTRODUCTION,

CONTAINING AN

ACCOUNT OF THE PARLIAMENT OF 1654;

FROM THE JOURNAL OF

GUIBON GODDARD, ESQ. M.P.

ALSO NOW FIRST PRINTED.

---

EDITED AND ILLUSTRATED

WITH NOTES HISTORICAL AND BIOGRAPHICAL

BY JOHN TOWILL RUTT.

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IN FOUR VOLUMES.

VOL. III.

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# INTRODUCTION.

THE courtiers of Whitehall, who attended the last hours of the late Protector, agreed in their report, that he had exercised his prerogative* of appointing a successor, by nominating, though, probably, almost in the article of death,† Richard, his eldest son; who had been a member of both his Parliaments, and in whose favour he had resigned the Chancellorship of Oxford University.‡ He also had been distin-

* See *infra*, p. 224, *note*; Vol. i. p. 385.

† See *infra*, p. 141, 263, *note*. Roger Coke mentions the opinion, that "Cromwell had, by his last will, when he was *compos mentis*, designed Fleetwood for his successor; whereas, Richard was substituted in a surreptitious manner, by the craft of some of the Council, when Cromwell had lost his senses." *Detection*, (1697,) p. 406.

‡ See vol. ii. p. 314, *note*. "Whitehall, July 29, 1657. This day, the most noble Lord, the Lord Richard Cromwell, was installed Chancellor of the most famous University of Oxon.

"About four o'clock, afternoon, Dr. John Owen, Vice-Chancellor of the University, with the heads of houses in their scarlets, the proctors, and a great number of masters of arts, came hither to the lodgings of my Lord Richard in their formalities, the beadles of the University preceding the Vice-Chancellor.

"The Convocation being set," and "the most noble Lord Chancellor elect" being "admitted Master of Arts," he "came attended by the reverend Dr. Wilkins," (his uncle, afterwards Bishop of Chester.) "His Lordship's robe was scarlet, and after the manner of the Proctor's habit." After "a speech in Latin to his Lordship," by the senior Proctor, and the presentation of "the Book of Statutes," and the various "ensigns of authority," and "an elegant speech in Latin, by the Vice-Chancellor, the oath of Chancellor was administered. His Lordship, in a short speech, declared his good acceptance of the honour done him, with promises of performing whatever lieth in his power, as

guished by the priority of nomination to the other House. With this report the Council were easily satisfied;* though an appointment, under such circumstances, was liable to animadversion, as will presently appear,† and could scarcely be sustained, except by the argument of possession, against that rigorous scrutiny which from the discordant interests of rival parties might be speedily expected.

Richard Cromwell accepted the appointment, with all its informality, and was immediately proclaimed in London and Westminster.‡ In a few days, the ceremonial was repeated

becomes their Chancellor, for the security, honour, and advantage of that renowned University.

"This ceremony being ended, banquets were prepared in several rooms, for the entertainment of that learned body." *Mercurius Politicus*, No. 373.

* *Whitlock* represents "the Council" as "satisfied, that the Protector, in his life-time, according to the Petition and Advice, had declared his son Richard to be his successor." *Memorials*, (1732,) p. 674.

† See *infra*, pp. 25—33, 87, 104, 105, 112, 113, 124, 125, 129, 141, 151, *note*, &c.

‡ See *infra*, p. 130. "The proclamation of Richard to be Lord Protector," says *Whitlock*, "was made in London, in the following words:—

"Whereas, it hath pleased the most wise God, in his Providence, to take out of this world the most serene and renowned Oliver, late Lord Protector of this Commonwealth; and his Highness having, in his life-time, according to the humble Petition and Advice, declared and appointed the most noble and illustrious, the Lord Richard, eldest son of his said late Highness, to succeed him in the government of these nations:

"We therefore, of the Privy Council, together with the Lord Mayor, Aldermen, and citizens of London, the officers of the army, and numbers of other principal gentlemen, do now hereby with one full voice and consent of tongue and heart, publish and declare the said noble and illustrious Lord Richard, to be rightful Protector of this Commonwealth of England, Scotland, and Ireland, and the dominions and territories thereunto belonging.

"To whom we do acknowledge all fidelity and constant obedience, according to law, and the said humble Petition and Advice, with all hearty and humble affections, beseeching the Lord, by whom princes rule, to bless him with long life, and these nations with peace and happiness under his government.

"Richard

throughout England; and at Dunkirk, the fall of which, and its exclusive military occupation by the English, though the French contributed to the capture, had formed the last, and not the least brilliant exploit, in the history of the Protectorate.*

Addresses, too often the stratagems of political intriguers, or the vehicles of servile adulation, are said to have been first employed in England, to compliment the late Protector's successful usurpation.† They were now profusely laid,‡

"Richard Chiverton, *Mayor*. Henry Lawrence, *President*. Nathaniel Fiennes, C. S. John Lisle, C. S., &c.

"God save his Highness, Lord Protector." *Memorials* (1732); see *Parl. Hist.* xxi. 227—232.

* See *infra*, p. 488, *note*.

† "In Oliver's time, they came in fashion," says the author of the *History of Addresses*, (1709,) p. 2.

‡ "Richard had his addresses, as well as his father, and in a far greater number, the custom prevailing more and more daily." *Ibid.* p. 6.

Dr. Bates says: "cum petitionibus approbatoriis numero circiter nonaginta quaquaversus advolant, ut exorienti soli adblandirentur." *Elenchus*, (1676,) p. 334. (They hastened from all parts, with about ninety addresses of congratulation, worshipping the rising sun.)

Roger Coke mentions "numerous companies of sycophants, from all parts of the nation, to the number of ninety congratulatory addresses, which Richard had as little good of, as King James II. had from those above thirty years after." *Detection*, (1697,) p. 406.

Richard, like other sovereigns, was not left unacknowledged by the flattering incense of dedications. See *infra*, p. 163, *note* *. The learned lawyer, Rushworth, (whose name appears, disgracefully, in 1660, among the witnesses for the crown,) now publishing the *Historical Collections*, to which I have been very frequently indebted, thus concludes a dedication to the young Protector:—

"But few words are best to princes. Vouchsafe, your Highness, pardon to him who thus presumes to make so mean an oblation at so high an altar. Your good acceptation will be the greatest honour to it." *Parl. Hist.* (1763,) xxiii. 218.

Even Mr. Locke has fallen into this absurdity of dedication. Thus, presenting his *Essay*, in 1689, to the Earl of Pembroke, a respectable private nobleman, neither possessing nor affecting any uncommon literary or scientific attainments, and scarcely known to posterity, beyond the *peerage*, he says:—

such is the unmanly vernacular language of Courts, at the feet of his son. These addresses, of whose preservation, on a reverse of his condition, Richard is said to have been singularly observant,* conveyed the usual tenders of lives and fortunes, from civil, military, and ecclesiastical communities, in various quarters of England and its dependencies. They, at length arrived, though probably "a day too late," even from the transatlantic provinces.† Foreign ministers, also, as if in accordance with Sir Henry Wotton's definition of an ambassador,‡ were not regardless of their diplomatic duties. Each presented from his Court, in the laboured style of compliment, the customary common-places of sorrow and gratulation;§ thus giving, "to airy nothings, a name" required on

"A present I here make to your Lordship; just such as the poor man does to his rich and great neighbour, by whom the basket of flowers or fruit, is not ill taken, though he has more plenty of his own growth and in much greater perfection. Worthless things receive a value, when they are made the offerings of respect, esteem, and gratitude." *Works*, (1740,) i. 10. See *infra*, p. 52, *note* ‡.

* See *infra*, p. 153, *note; House of Cromwell*, (1787,) i. 179—182.

† See *Biog. Brit.* (1789,) iv. 529. Yet Governor Hutchinson, says: "An express acknowledgment of Richard Cromwell, was expected from the Massachuset's, but they declined it." *History*, (1765,) i. 206.

‡ Isaac Walton relates, that Sir Henry Wotton, "at his first going ambassador into Italy, (in 1604,) as he passed through Germany, was requested," by a friend, "with whom he was passing an evening in merriment, to write some sentence in his *albo;* a book of white paper, which for that purpose, many of the German gentry usually carry about them; and Sir Henry Wotton, consenting to the motion, took an occasion from some accidental discourse of the present company, to write a pleasant definition of an Ambassador, in these very words: *Legatus est vir bonus peregrè missus ad mentiendum reipublicæ causâ.*" See the *Life* prefixed to *Reliquiæ Wottonianæ*.

§ The Lord de Bourdeaux, "at an audience to which he was introduced by Sir Oliver Fleming, Master of the Ceremonies, presented to his Highness two letters; one from his Majesty of France, the other from his Eminency, Cardinal Mazarine, and delivered himself in a speech to this effect:

"That his Master, the King of France, having heard of the death of his late Highness, of glorious memory, did very much take to heart the loss of so great a captain, and so good an ally of his crown. That his

such occasions, to avoid the imputation of some unfriendly purpose.

"The situation of Richard," says Dr. Kippis, "had every thing that was promising and prosperous in its external appearance. The voice of joy and praise was heard from all parts;" and "for nearly five months from his accession to the Protectorship,* he seemed to remain as great a prince as ever

Majesty rejoiced, at being informed, that in order to the repairing so great a loss, it had pleased God to establish his Highness, as his father's undoubted successor." *Parl. Hist.* (1760,) xxi. 237.

"Yet as soon as Cardinal Mazarine heard, at Paris, of Oliver's death, he personally waited upon the Queen-Mother of England, to congratulate her thereupon, as the most probable accident that could have happened to advance her son's restoration." *Ibid.*

*Whitlock* mentions, "October 18th, audience given by Richard, to the French Ambassador, when Richard did carry himself discreetly and better than was expected." *Memorials*, (1732,) p. 675.

* The circumstances attending the accession "of his serene Highness, Lord Richard Cromwell," are thus described by *Prestwich*, a contemporary.

"Instantly, on the death "of his serene Highness, Oliver Cromwell, Lord Protector, the Privy Council assembled, and summonses were immediately sent to all the Lords and superior officers, both civil and military. After which, his son and successor, Lord Richard Cromwell, was acknowledged by the Council, and was thereupon proclaimed, as the rightful and most undoubted Heir, Prince, and Governor. And the next morning, being Saturday, the following notice was forwarded to all the chief towns in the dominions of the Commonwealth, with orders to make the same public, by means of the Common Cryer, &c. &c.

"Public notice is hereby given and declared: That whereas, it hath pleased Almighty God, by his providence, to take away the most serene and most illustrious Oliver, Lord Protector; who, according to the Petition and Advice, in his life-time, had declared the most noble and illustrious, his son, the Lord Richard Cromwell, to be his successor; the Council, the Lord Mayor, the officers of the army, therefore, do heartily and unanimously, acknowledge the said Lord Richard, as rightful Protector and Chief Magistrate, and do require all persons to yield obedience; beseeching Almighty God, by whom Princes reign, and wise men decree justice, to bless him with long life, and the nations under him, with peace and happiness.

"This being finished, Sir Richard Chiverton, the Mayor, and the Aldermen of London, according to order from the Council, that Saturday, in the afternoon, came down to Whitehall, and condoled and

his father had been before him."* The exigencies of government, however, required a Parliament,† to whatever hazards the Protector's new and feebly constituted authority would be exposed, amidst the free and fearless discussions, which from a late example, might be fairly apprehended in such an assembly. That these hazards were of no ordinary character will presently appear.

*Westminster, January* 27, 1658-9.

This being the day appointed for the meeting of the Parliament, his Highness, attended by his Privy Council, and the high officers of state, and of his household, with the officers of his army, and the gentlemen of his household, passed by water, in a stately new built galley, and landed at the Parliament-stairs; from whence, the Lord Cleypole, Master of the Horse, bearing the sword before him, he passed up to the House of Lords; where, having reposed a while, he passed thence to the Abbey Church, being attended as before, the Lord General Disbrowe then bearing the sword. ‡

congratulated Lord Richard Cromwell; and, in their presence, Fiennes, the Lord Commissioner gave him his oath. After which, the Rev. Mr. Manton, as Prelate of the Protectorship, said prayers, and blessed him, his council, armies, and people. After this, on the Monday next, they proclaimed in great triumph; the lords, great officers, with most of the superior army and navy officers attending the solemnity, and this at the usual places in London." *Respublica*, (1787,) pp. 204, 205. See *supra*, p. ii. *note* ‡.

"Richard Cromwell," says *Wood*, "was proclaimed Protector, at Oxon. (Sep. 6,) at the usual places where Kings have been proclaimed. While he was proclaiming before Saint Marie's Church dore, the Mayor, Recorder, Town-Clerk, &c. accompanied by Colonel Unton Croke, and his troopers, were pelted with carret and turnip-tops, by young scholars and others, who stood at a distance." *Life*, (1772,) pp. 115, 116.

* *Biog. Brit.* iv. 530.

† Which was called on the antient model. See *infra*, p. 74, *note*.

‡ *Mercurius Politicus*, No. 552.

# PARLIAMENTARY DIARY.

*&c. &c.*

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*Thursday, January 27,* 1658-9.

THE Parliament began at Westminster.

Dr. Thomas Goodwin* preached at the Abbey, where his Highness and the Lords sat together, and the House of Commons, *sparsim*.† His text, *Psalm* lxxxv. 10;‡ his scope, heal-

* A celebrated Independent, whose works occupy five folios. In the Assembly of Divines he took an active part, and preserved their transactions, in several volumes. Dr. Goodwin was of Cambridge University, and a Fellow of Eton College, but became "one of the favourites of Oliver Cromwell, who made him President of Magdalen College, Oxford." He, of course, lost every thing at the Restoration, but his religion and learning, preferments which kings can neither give nor take away; and which, under the imperfect discipline of a princely education, they have been, too seldom, qualified to appreciate.

Dr. Goodwin died in 1679, in his 80th year. He was buried in Bunhill Fields, where is a long Latin inscription on his tomb: yet, such was the vengeance on the dead, indulged by the adherents of restored royalty, that several lines, not in the least political, but describing the judgment of the deceased, as to the scriptural form of Christian societies, and his ability and success as a Christian Minister, "were not suffered to be engraved on the stone." See Dr. Calamy's *Account* (1713), p. 60. *Continuation* (1727), 1, 91.

According to *Wood*, Dr. Goodwin "is said, in the common Register of the University, to be *in scriptis in re theologicâ quamplurimis orbi notus*." See *Athen. Oxon.* (1692,) ii. 783.

† Here and there.

‡ On the late Protector's use of this Psalm, see Vol. ii. p. 325.

ing, inciting to unity, and to mix mercy and truth, righteousness and peace together: to give liberty for erroneous consciences; but not so much encouragement as to true professors, &c.

A Quaker got near the pulpit and spoke a deal of nonsense (the sermon done), and his Highness paused a little till he had done.

The sermon ended about one o'clock. His Highness went to the Lords' House, where the Lords being all placed; and a great many Commons, *sparsim*, at the bar amongst strangers; the Lord Chamberlain, Lord Comptroller, and Black Rod and Heralds, cleared the room, save only for some known Members that stayed, and some that would not go out by their command; as Colonel Matthews, &c.

They say there were about 150 Members sitting in the House, while his Highness was speaking in the other House, and that the Black Rod went for them, but they came not. Mr. Scobell* said we should have come there, as a House of Parliament.

His Highness made a very handsome speech,† in order to his father's memory, his esteem of Parliaments, his own being settled by God's providence and the law. He called the army the best army in the world, from their patience in not mutinying for their pay:‡ invited us to unity, and referred the business of money, particularly, to the House of Commons. He would spend his life for and with the Parliament as that wherein his and the nation's principal safety consisted, and they should see his readiness to attend to any thing that they should offer as advice to him. He left the rest to be said by Lord-keeper Fiennes.

Lord Fiennes said,§ what can he say but the same thing, that is, to speak after a King; so I, after his Highness, can only echo it over.

* On the appointment of the "Other House" he had become their Clerk. See vol. ii. pp. 350.

† See *infra* pp. 7, 11; *notes* *.

‡ See their destitute condition, Vol. ii. p. 366.

§ See his speech, at length, *Parl. Hist.* xxi. 269—281.

His speech was longer, but much to the same purpose; only run more upon the triple cord, and inviting to unity, and not to meddle with foundations.*

This done, the members then present went to the House of Commons, where, about one o'clock, the House was very full, at least four hundred.

*Sir Walter Earle.* We do not come here to sit still and say nothing. A speaker must be chosen; you will think that fit. I believe there is in the House a very worthy person, and fit for your service.

The House called, Name him, name him; then he named him, viz. Mr. Chute.

Then divers called out, *nemine contradicente.* Mr. Chute to the chair.

*Mr. Chute.* I need not make a speech to excuse my unfitness to serve you. I carry a natural infirmity about me. I have it in my foot; so much disability, that I was scarce able to crawl hither to do my duty here. Another infirmity I have, which you all know, and will every day more. I have no manner of experience in the way of that employment, and the greatest part of what I know, is the least part of what I ought to know. For these and other reasons I could offer, I move to make choice of another.†

* The Lord Commissioner recommends, "That all parliaments for the future shall be parliaments of the three nations; and so, at length, a strong treble cord twisted together, which cannot be easily broken; I say," he adds, "which cannot be easily broken while it remains twisted together. But if untwisted, it may not only be soon and easily broken itself; but afterwards each part will serve and help to break the other." *Ibid.* 271. For other specimens of the learned Lord Commissioner's parliamentary eloquence, see vol. ii. p. 330, 409, *notes.*

† This desire of another choice, like the *noli episcopari*, attributed to the prelacy, is still affected at the commencement of every Parliament. "The Speaker's excuse," says Mr. Elsynge, "is formal, and out of modesty; for he first excuseth himself to the Commons, when they elect him, and afterwards to the King when he is presented. The Lord Chancellor confers with the King, and then telleth him, that his Majesty doth approve of the Commons' choice, and will not allow of his excuse." See "Manner of holding Parliaments," (1768,) pp. 165, 167.

It does not appear that the Protector had any controul over the Commons, in their choice of a Speaker.

All called out Mr. Chute to the chair.

*Sir Walter Earle* and ———* led him to the chair.

Sir Arthur Haslerigge was about to second the motion, but it needed not.

*Mr. Speaker*,† being in the chair, moved; Gentlemen, I am bound to obey your commands; and paused till the mace came, which was called for. Then he proceeded to make another apology.

As the form is, gentlemen, you called me to this place for directions, so that I must not give ill examples by troubling you with a long speech. I never knew much said in long speeches. I never loved them. I desire that you would think of me as the motto on the sun-dial is, *auspice me; ut te auspiciam.* The best adage is, self do, self have; *volenti non sit injuria.* You have placed me here, and you must bear the burthen of my infirmities, &c.

Mr. Speaker being thus placed, four Aldermen of the City of London came together into the House in scarlet gowns, and took their places.‡

*Mr. Speaker* moved that he would not hinder the business of settlement; but supposed the course to be, first, to read a bill.§ He had a bill touching the non-exportation of fish. He moved it might be read, and it was read. He presented it, as a bill which was of the last Parliament.

*Mr. Knightley.* I move for a day for the second reading of it.

*Sir Walter Earle.* It is not proper to recommend a bill, let it recommend itself; but if one will speak to the rejecting

* Thus blank in the MS., but in the *Journals* "Mr. Charles Rich, brother to the Earl of Warwick." See vol. ii. pp. 315, *ad fin.*

† "Mr. Chaloner Chute," says *Whitlock*, "was chosen Speaker of this Parliament, an excellent orator, a man of great parts and generosity, whom many doubted that he would not join with the Protector's party, but he did heartily." *Memorials* (1732), p. 676.

‡ This custom is still observed, on the meeting of every new Parliament, though the four members, as at present, are not, necessarily, Aldermen. Any liveryman is eligible.

§ Such is the modern practice, before the consideration of the King's speech, as if to assert for the Commons their independence of the crown.

of it they may; otherwise, no one may speak to it upon the first reading.

*Mr. Speaker.* I move to adjourn for two or three days.

*Mr. Weaver.* Adjourn now, and call the House, for fear of intruders.

*Mr. Hungerford.* It is too soon to call the House, till all returned come in.

*Colonel Thompson.* You have two laws a-foot. You spoil the game if you run not one out first. Put this question off your hands, and I shall not be against adjourning.

*Mr. Hungerford, Captain Hatsell, Captain Baines,* and *Mr. Chaloner,* moved the like.

*Mr. Knightley.* Formerly all bills were read a second time between ten and eleven.

*Mr. Speaker.* Formerly, no time was set down for the second reading; but the Speaker took a convenient time for it.

*Sir Walter Earle.* I move to call the House, in case of intruders. The commissioners for swearing the members* have informed me that one borough, which had a right to choose but one burgess, had returned two, and that by an escape both were sworn and sat. I would have all those things examined.

*Colonel Mildmay.* I move to choose your clerk. The person in place may be deserving, and haply none will be against him; but own your privilege in choosing; and the like, for all your officers.

*Mr. Onslow.* Put your question upon the form. He served in the last Parliament; and, I suppose, is so deserving that none will be against it.

The clerk, viz. Mr. Smythe, being commanded to withdraw, the question was put, and passed, *nemine contradicente.*

*Mr. Speaker* moved the question, that the clerk be continued.

*Sir Arthur Haslerigge* liked not the word continued; so it was changed, that he shall be clerk, &c.

*Sir Thomas Barnardiston* and *Mr. Weaver* moved the like for the other officers, viz. Darnall, Clerk Assistant, and Serjeant Birkhead, and all resolved, *nemine contradicente.*

* See *infra*, p. 11, *note* †.

*Colonel Mildmay.* I would have the clerk cautioned for sitting without leave, before he was chosen by the House. The like may be imposed upon you hereafter. Part not with any of your privileges, &c.

He was not seconded.

*Sir Arthur Haslerigge.* I move that care be taken to make your House as full as you can; that, in case of double returns, by reason of the false dealings of Sheriffs and Mayors, these may be speedily considered. I would ever in all places, especially in this House, observe this rule,—do as I would be done by.

A gentleman cried *No.*

*Sir Arthur* took exceptions. If that gentleman that cries *No*, were without doors, and kept out as divers of your members are, he would not cry *No.* I move that, to-morrow, you appoint your Committee for privileges.

*Colonel Matthews*, the like.

*Mr. Weaver.* It is not proper to meddle with privileges till your House be called, to see if all that sit are members.

Some said, name the Committee first, and some, have the House called first, and both said it was according to the orders of the House.

*Mr. Speaker.* Well may I be ignorant of your orders, when I see both sides so confident, in different orders.

*Mr. James Ashe.* I move for a Committee of privileges.

*Mr. Trenchard.* I never knew a Speaker and a Committee appointed both in one day.

*Major Burton* moved for a day of humiliation; but nobody seconded the motion.

The House adjourned itself till eight next morning; but no question was put, for it need not, unless there was a day intervening. The house rose at four.*

* The following is the commencement of the journal of this Parliament, kept by Mr. Guibon Goddard, Recorder of Lynn, and Member for Castle Rising, whose manuscript volume I have described in the preface.

"Tuesday, 25th Jan, 1658-9. I set forward in a great storm of wind from Lynn for Westminster, in order to serve the Parliament, where, on Thursday morning, about nine of the clock, I arrived, and presently

The Speech of his Highness the Lord Protector.

My Lords and Gentlemen,

I believe there are scarce any of you here, who expected some months since to have seen this great Assembly at this time, in this place, in peace; considering the great and unexpected change which it hath pleased the all-disposing hand of God to make in the midst of us. I can assure you, that if things had been according to your own fears, and the hopes of our enemies, it had not been thus with us: and, therefore, it will become both you and me, in the first place, as to reverence and adore the great God, possessor of heaven and earth, in whose hands our breath is, and whose are all our ways, because of his judgments; so to acknowledge him in his goodness to these lands, in that he hath not added sorrow to sorrow, and made the period of his late Highness's life, and that of the nation's peace, to have been in one day.

Peace was one of the blessings of my Father's government; a mercy, after so long a civil war, and in the midst of so great

shifted myself, and got down to Westminster that day (being the first day of the sitting of the Parliament) before the sermon was done, that being preached by Dr. Thomas Goodwin, upon the text of mercy and truth having met together, righteousness and peace having kissed each other.

"Being at Westminster, I was informed I must take an oath, in the lobby before the Parliament door, where being, and demanding of the oath, I was told by Mr. Smythe, that there being a double return, I could not sit before the opinion of the House was therein agreed, and so I did forbear, at present, to go into the House, but I went into the Painted Chamber, and so to the other House.

"Not long after, the sermon being ended, my Lord Protector came into the other House, where he first made a very sober and full discourse of the occasion of the calling of this Parliament. After whom, my Lord Fiennes, one of the keepers of the seal, enlarged upon the heads of the Protector's discourse; after which the Commons departed to their own House, and chose for their Speaker, Mr. Chaloner Chute, and appointed their officers, and read a Bill, according to their course, and ordered the next day to call over the House, and to appoint a Committee then of privileges, which being ended, they adjourned until next morning at eight of the clock." *Goddard MS.*

division which that war bred, is not usually afforded by God unto a people in so great a measure.

The cause of God, and these nations, which he was engaged in, met in all the parts of it, as you well know, with many enemies, and great opposition. The Archers, privily and openly, sorely grieved him, and shot at him, yet his bow abode in strength; and the arms of his hands were made strong by the hands of the mighty God of Jacob.

As to himself, he died full of days, spent in great and sore travail; yet his eyes were not waxed dim, neither was his natural strength abated, as it was said of Moses. He was serviceable even to the last.

As to these nations, he left them in great honour abroad, and in full peace at home; all England, Scotland and Ireland, dwelling safely, every man under his vine, and under his fig-tree, from Dan even to Beersheba.

He is gone to rest, and we are entered into his labours; and if the Lord hath still a blessing for these lands (as I trust he hath), as our peace hath been lengthened out to this day, so shall we go on to reap the fruit, and gather the harvest of what his late Highness hath sown, and laid the foundation of.

For my own part, being by the providence of God, and the disposition of the law, my Father's successor, and bearing that place in the government that I do, I thought it for the public good to call a parliament of the three nations, now united and conjoined together into one commonwealth, under one Government.

It is agreeable, not only to my trust, but to my principles, to govern these nations by the advice of my two Houses of Parliament. I find it asserted in the humble Petition and Advice (which is the corner-stone of this building, and that which I shall adhere to), "that Parliaments are the great Council of the chief Magistrate, in whose advice both he and these nations may be most safe and happy." I can assure you I have that esteem of them: and, as I have made it the first act of my government to call you together, so I shall further let you see the value I have of you, by the answers

that I shall return to the advice that shall be given me by you, for the good of these nations.

You are come up from your several countries, as the heads of your tribes, and with hearts (I persuade myself) to consult together for their good. I can say I meet you with the same desires, having nothing in my design but the maintenance of the peace, laws, and liberties, both civil and christian, of these nations; which I shall always make the measure and rule of my government, and be ready to spend my life for.

We have summoned you up at this time, to let you know the state of our affairs, and to have your advice in them: and I believe a Parliament was never summoned upon a more important occasion.

It is true, as I have told you, we are, through the goodness of God, at this time in peace; but it is not thus with us, because we have no enemies. There are enough both within us and without us, who would soon put an end to our peace, were it in their power, or should it at any time come into their power.

It will be becoming your wisdom, to consider of the securing of our peace against those, who, we all know, are, and ever will be, our implacable enemies. What the means of doing this are, I shall refer unto you.

This I can assure you, that the armies of England, Scotland, and Ireland, are true and faithful to the peace and good interest of these nations, and it will be found so, and that they are a consisting body, and useful for any good ends; and, if they were not the best army in the world, you would have heard of inconveniencies, by reason of the great arrear of pay which is now due unto them, whereby some of them are reduced to great necessities: but you shall have a particular account of their arrears, and I doubt not but consideration will be had thereupon, in some speedy and effectual way. And this being matter of money, I recommend it particularly to the House of Commons.

You have, you know, a war with Spain, carried on by the advice of Parliament. He is an old enemy, and a potent one, and therefore it will be necessary, both for the honour and

safety of these nations, that that war be vigorously prosecuted.

Farthermore, the constitution of affairs in all our neighbour countries, and round about us (as well friends as enemies) is very considerable, and calls upon us to be upon our guard both at land and sea, and to be in a posture able to maintain and conserve our own state and interest.

Great and powerful fleets are preparing to be sent forth into these seas, and considerable armies of several nations and kings are now disputing for the mastery of the Sound, with the adjacent islands and countries; among which is the Roman Emperor, with other Popish states. I need not tell you of what consequence these things are to this state.

We have already interposed in these affairs, in such manner as we found it necessary for the interest of England; and matters are yet in such a condition in those parts, that this state may, with the assistance of God, provide that their differences may not prejudice us.

The other things that are to be said, I shall refer to my Lord Keeper Fiennes, and close up what I have to say, with only adding two or three particulars to what I have already said.

And first, I recommend to your care the people of God in these nations, with their concernments. The more they are divided among themselves, the greater prudence should be used to cement them.

Secondly, the good and necessary work of reformation, both in manners and in the administration of justice, that profaneness may be discountenanced and suppressed, and that righteousness and justice may be executed in the land.

Thirdly, I recommend unto you the Protestant cause abroad, which seems at this time to be in some danger, having great and powerful enemies, and very few friends; and I hope and believe, that the old English zeal to that cause is still among us.

Lastly, my Lords, and you Gentlemen of the House of Commons, that you will in all your debates maintain and conserve love and unity among yourselves, that therein you

may be the pattern of the nation, who have sent you up in peace, and with their prayers, that the spirit of wisdom and peace may be among you: and this shall also be my prayer for you: and to this let us all add our utmost endeavours for the making this a happy Parliament.*

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*Friday, January* 28, 1658-9.†

Mr. Peters‡ prayed, standing.

*Mr. Bacon* moved, that Wednesday be appointed for a fast in the House.

*Mr. Knightley* moved for a fast.

*Mr. Gerrard* moved for Dr. Reynolds § to preach.

Resolved, *nemine contradicente.*

*Mr. Knightley* moved for Mr. Manton,‖ his parish minister.

* See "A Compleat Collection of Remarkable Speeches," (1707) pp. 76—80; *Parl. Hist.* xxi. 265—269; *Harleian Miscellany* (1808), i. 25—28.

Mr. Slingsby Bethel, member for Knaresborough, in this Parliament, says, the Protector "made, beyond expectation, a very handsome speech exceeding that which followed by his Keeper of the Great Seal." See "A Brief Narrative of the Parliament called by Richard Cromwell," annexed to "The Interests of the Princes and States of Europe." (1694) pp. 234.

† "Friday, 28th Jan. 1658-9. This morning I went to Westminster, and the Commissioners for tendering the oath, being fully satisfied that although there was a double return for the borough for which I served, yet, in regard, I was returned by both the returns, that my election stood free from any objection, therefore they made no farther scruples, but gave me the oath, whereupon I presently entered the House." *Goddard MS.* p. 106.

Among these forty-one Commissioners, was Edmund Ludlow, whose attendance in that capacity could not have been expected, but who was named, probably, with the vain hope of conciliating him to the Protectoral usurpation. That inflexible republican, however, sat in this Parliament, without taking the oath. See his *Memoirs*, ii. 619-623. For the names of the Commissioners, see the *Journals*. The oath was, *verbatim*, as quoted, vol. ii. p. 297, *note*.

‡ See vol. i. p. 244.; ii. pp. 346, 420, *note*.

§ Who, after the Restoration, became Bishop of Norwich. See *infra*.

‖ See vol. ii. p. 311. *note*.

Resolved, *nemine contradicente.*

*Mr. Weaver* moved for Mr. Calamy.*

*Major-General Kelsey* moved for Dr. Owen.†

*Dr. Clarges* moved for Mr. Calamy.

*Sir Arthur Haslerigge* moved for the same.

*Lord Lambert* moved for Dr. Owen.

There was a great debate about which should be of the two.

*Mr. Grove.* To prevent reflection, I move for both to be appointed, and that all the four carry on the work of the day, two preach and two pray; as themselves should agree of it.

*Mr. Bacon* seconded that motion.

*Mr. Bodurda* and *Mr. Knightley* moved to put the question for them singly. Otherwise, you include men's votes, that, haply, would be for one, and not for the other.

A great debate arose which should be put first.

*Lord Lambert* was for Dr. Owen.

*Sir Walter Earle* was for Mr. Calamy.

*Sir Arthur Haslerigge* was for Mr. Calamy, first, and highly commended him.

*Mr. Hoskins* was for the same.

Resolved, to put Dr. Owen first, because, as it was urged, the motion for him was first seconded.

A debate arose about the place.

*Mr. Knightley* was for Saint Margaret's church.

*Major Burton* and *Mr. Bodurda* were for the House.

*Sir Arthur Haslerigge.* I am for the House. The minister cannot speak so freely in public, to tell of faults and duties, for a reflection upon the Parliament there, is a reflection upon the nation. People come there with ill ears, to reproach if they can. There is a mixture of hearers. Though there be less room here, and crowding, and want of air; yet I would expose myself to any inconvenience within these walls, to hear our faults and our duties.

* See vol. ii. pp. 320, 373, *notes.*

† See *Ibid*, p. 97, *notes.*

*Mr. Jenyns.* I am sorry to hear this House has so many faults, that they may not be told of them publicly. I move that St. Margaret's be the place.

Resolved, that it be on Friday next, in the House.*

*Serjeant Dendy* made a set speech for thanks to be given to Dr. Goodwin.

Nobody seconded him. They said the sermon was to the Lords, and they must thank him.

* "That the Serjeant at Arms do receive the collection of the charity of this House on the day of humiliation." *Journals.*

"The first thing propounded was, for a day of humiliation and seeking of God, for a blessing upon the endeavours and counsels of the House. The time, the place, the persons, were much controverted. At length it was resolved and so ordered, that, for the time, it should be upon this day sevennight, for the place that it should be within the walls of our own House, and not in St. Margaret's, Westminster. And that, to avoid some inconveniences, which had happened in former times, when such preachings being public, and before a promiscuous auditory, either the ministers, though good men, wanted the liberty which it is fit they should have, in rebuking and reproving the faults and miscarriages of their superiors, the Parliament, or if they did speak plain, and home to the infirmities and faults of their governors, the auditory and people were too apt to take hold of any thing to reproach and scandalize the members for their faults: by which the Parliament itself was brought into great obloquy and disgrace. Besides, sometimes, through indiscretion in the preachers, who sometimes would be too busy and pragmatical, in matters of news and state, ill affected persons came frequently to such exercises, not out of any zeal or devotion, but to feel the pulse of the state, and to steer their counsels and affairs accordingly. Many other inconveniences were apprehended to arise from those public exercises before the body of the Parliament out of their own house.

"Besides a very material distinction was used between a private fast of the House, which ought to be only by the House, and in the House, and a public fast wherein the House was concerned with the rest of the nation, and might be observed promiscuously by them, in any place where they pleased.

"The persons nominated to officiate, were 1, Dr. Reynold's; 2, Mr. Manton; 3, Dr. Owen; 4, Mr. Calamy, whereof two of them were desired to pray, and two to preach, but to be distributed and ordered as themselves shall think fit. And those members that nominated these persons were to give notice to them respectively." *Goddard MS.* pp. 107, 108.

*Sir Walter Earle.* We must not spend time in compliment.*

*Mr. Speaker* moved to call the House.

*Mr. Scawen* moved, not to call it, till the House be full.

Resolved, that the Committee for Elections and Privileges† do, in the first place, consider of those returns, where more than ought to be are returned for one place, and make their report thereof speedily to the House.

Resblved, that all such as will question any elections now already returned, shall do the same by petition, within twenty-eight days from this day, and that those that shall question any elections, to be hereafter returned, shall likewise do the same within twenty-eight days after the return thereof.

Resolved, that the Committee for elections and privileges, do mark and read the petitions to be delivered in to them, concerning questionable elections, in order as they shall be delivered in; and that they do appoint days for hearing and proceeding upon the same, accordingly; and report the same to the House, in order as they shall be determined.

Resolved, that the Committee of elections and privileges do, in the first place, examine the mistake concerning the return of Colonel Salmon, to be one of the members of this House, and do first report the same to the House.

Resolved, that the Committee this day appointed for elections and privileges, do sit, notwithstanding the adjournment

* "It was moved by Serjeant Dendy, with a studied preamble, that thanks might be returned to Dr. Goodwin that preached yesterday, but that was presently cried down, as well in regard that he was not appointed or desired by the Parliament to preach, as for that in truth sufficient care was not taken to give that respect to the members which was fit, in preserving rooms and accommodation of places for them, for Sir Walter Earle affirmed, he could not get any room to hear it." *Goddard MS.* p. 108.

† Consisting of 147 members. The names annexed in the MS. are exactly the same as in the printed *Journals*.

of the House. John Smythe, Clerk of the Parliament, to attend the petitions.*

* "Some moved for the calling over of the House, but that was thought not yet seasonable, in regard many returns were not yet come up, and some thought it rather fit that the Committee of Elections should be first nominated. It was objected that unless the House were called over, many might sit upon double returns, or otherwise, who had no right, but that was thought good reason to proceed to the naming of a Committee of privileges, which might examine, and prevent that inconvenience, but not to hasten the calling over the House, when it could not yet be justly accounted a fault in any man that was yet so early absent.

"Therefore, it was unanimously desired that the Committee of Privileges might forthwith be made, that such persons as were unduly kept out by false or double elections, might be brought in, and such other as did sit without good right might be cast out.

"Thereupon a Committee was named, of which myself was one, to sit in the Star Chamber this afternoon, at two of the clock, and so afterwards upon Saturdays, Tuesdays, and Thursdays, in the afternoon.

"The powers and instructions were to hear all matters of privilege concerning elections. 2dly, That double returns shall be first considered. 3dly, That all Petitions shall be received by the Committee, and marked as they were received, and shall be proceeded in, and reported in the same order as they were marked, that men might the better know how to attend and prepare themselves in their business.

"After this Committee was settled, and the House ordered to be called over on Monday morning, the House adjourned over until that time, only a breach of privilege was moved, as offered to the person of a particular member of the House, which happened to be my brother Bish, who, being chosen with one Mr. Turgis, for the borough of Gatton, in Surrey, one Audley, who had been a kind of Major, had stood in competition with them, but Mr. Turgis and my brother Bish, being returned by the officer, and Audley not returned, he conceived himself thereby grieved, and meeting with my brother Bish in Westminster-hall he accosted him with very passionate words. At length, he called Mr. B. rascal, several times, and base fellow, and that he was no gentleman, and that he would set him out in his colours, and, in fine, provoked him to go out of the hall with him, and challenged him plainly to fight with him, and although Mr. Bish did let him know, that he was returned a member of Parliament, yet Audley desisted not. This being represented to the House by Mr. Knightley, and after seconded by Mr. Bulkeley, and thirded by Sir A. Haslerigge, and a precedent by him cited, which, in truth, was his own case against one Holford, who, after Sir A. Haslerigge and another had been elected knights for the county of Lei-

*Saturday, January* 29, 1658-9.*

The Committee of Privileges this day adjourned from the Star-Chamber, to the House, in the forenoon, where the case of Reading, between an election made of Mr. Henry Nevile,† and Mr. Blagrave one way, and another election made of other persons, another way, took up almost the whole forenoon's debate.

The case was, that the Mayor was elected and chosen in August last, and sworn the first Monday after Michaelmas, according to usual course. Not long after, upon the noise of a Parliament, some debate happened in the Council Chamber, between the Mayor, Aldermen, and Common Council, concerning the manner of their elections, the Mayor declaring for free and open public elections by all the Commons out of the House. Some of the members of that House conceiving the right of election to remain with them in the House, apprehended that the Mayor went about to betray and lose the privileges of the House, which being resented by others, and heat of the debate begetting unkindness, the major part of the House displaced the Mayor, ejected and removed him from his place, and did choose and swear another Mayor in his place. This new Mayor makes an election in the House of two Burgesses, and returns them. The old

cester, spake openly while the Indentures were sealing, and before they were delivered, or returned, that the county had made good choice of one, but the other was unworthy, or to that effect; yet for these words Holford was sent for up to the bar, committed to the Tower, and fined to the party, and forced to be in prison until Sir A. Haslerigge moved for his freedom.

"Hereupon it was ordered that Audley should be sent for up to the bar, in safe custody, to answer the said complaint, and after to be proceeded against as justice and the privilege of the House required." *Goddard MS.* pp. 109, 110.

* Several pages of the MS. Diary, after Jan. 28, are left entirely blank, designed, no doubt, to contain the Parliamentary proceedings of the 29th and 31st. What can now be recovered of these, are here supplied, from the *Goddard MS.* pp. 110—112.

† Author of *Plato-Redivivus.*

Mayor, and the Commons at large, make another election of Mr. Nevile and Mr. Blagrave. Whether of these two elections were good and warrantable was the question.

Reported by the Committee, and so ordered by the House, that the return and election of Mr. Nevile and Mr. Blagrave was good, and the other not.

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*Monday, January* 31, 1658-9.

Calling the House, and something concerning the Scotch members.

Reports from the Committee of Privileges.

A warrant for apprehending Major Audley.

The cases of Oxford and Reading, about elections.

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*Tuesday, February* 1, 1658-9.

*Mr. Speaker* took the chair at half an hour past eight.

Mr. Cooper* prayed.

* "Ian. 31. Resolved, that Mr. Cooper, who prayed with the House this morning, be desired to continue to officiate and perform the duty of prayer in this House, every morning, during this session of Parliament." *Journals.*

The remuneration of their Chaplain appears to have been almost the final proceeding of the House. "April 22, 1659, (their last day) "Resolved that the sum of 50*l.* be given and bestowed upon Mr. Cooper, the minister, for his great labour and pains, in attending the House daily," &c. &c. "That a Committee be appointed of five," (among whom was Vane and Haslerigge) "to attend his Highness, to desire him to grant his Privy-seal, for the payment of the sum." *Journals.*

William Cooper, A. M., was Minister of St. Olave, Southwark, whence he was ejected in 1662. He is described by Dr. Calamy, as "a critical linguist, no mean philosopher, a quick disputant, and well versed in controversies, a learned expositor, a celebrated historian, and a fine poet, especially in Latin." Yet he appears to have published scarcely anything besides "a thanksgiving sermon before the Parliament, and some papers of Latin verses."

Mr. Cooper was first beneficed by Laud, whose patronage he attained by some acceptable performances of his wife's father, "a considerable

*Mr. Speaker* acquainted the House with a message from the judges of the Common Bench, touching Henry Nevile's case against the sheriff, about an election last Parliament.

They desired me to take the record hither. I would not do it without your directions. It is a new case, *primæ impressionis.*

*Mr. Gewen.* I would have this debated in a full House, when the lawyers are present.

*Sir Arthur Haslerigge.* I love not to hear it, that there is a lameness in this House. I know no law-book for you to be directed by. It is not a case of such difficulty. Yourself is now the greatest man in England. I look upon you so, except what is to be excepted. I had almost forgot myself, but I am pretty right yet; if I can hold myself there.

I say I look upon you as the greatest man in England; the Speaker of the Parliament of England or Commons, what you will call it: I would give no offence. It is not fit for you to take a record from any inferior court. Your clerk is more proper than yourself to send for it. Make an order for the judge's clerk to bring it up. That is more proper and fit than to send your clerk.

*Mr. Starkey.* It seems there is *causa difficultatis* found by the judges in this case; and they desire your directions.

1. It concerns not any member or right of election, this present Parliament; so is no concern to you; it being of the last Parliament, now ended and determined.

2. It is not proper to bring the record hither. It should rather be brought to the Lords' House. I hope it is no offence for me to call it so here. I would not wade farther into this

Dutch limner." At length, "proving a Puritan," he found it convenient, like another Puritan, flying from persecution, to go "beyond Canterbury," and became "Chaplain to the Queen of Bohemia," grandmother of George I., residing "for several years, in her family at the Hague." There he "had free conversation, in clean Latin, with the foreign envoys that resorted to her; and became so well versed in the affairs of Europe, as to be reckoned no small politician." See Dr. Calamy's *Account,* (1713,) p. 22.

business, considering that it was of the last Parliament; but rather leave it to the judges to determine; or arrest judgment, as they please.

*Mr. Knightley.* The judges do *hæsitare in limine.* The judgment is passed: the jurors are judges. So it is said in the country. You are not taking it from them. I would have the proper officer to bring it before you, and then judge as you see cause.

*Mr. Pedley.* If it be a case of privilege of the House, then you may take it upon you; but if otherwise, it is proper for the Lords' House. The record cannot be brought out of the Court. It should be certified. In Sir John Le Stallen's case, *Edw.* iii., they sent the clerk of the House to cause them to certify. *Alius et plures* issued out. The House heard the cause, and directed the judges to give judgment. Nobody complains to you.

*Mr. Speaker.* I only ask you whether I shall receive the transcript.

*Sir Walter Earle.* I am against bringing the record hither. The record was once required from the clerk of this House, but he fell down on his knees* and besought the King that his life might rather be taken.

*Mr. Manley.* This is not an ordinary course of proceeding in a writ of error, but a special case wherein your directions are desired. I would have the record brought hither.

*Mr. Steward.* The rule delivered in the last Parliament from the chair, was, that the Lord Chief Justice should deliver a transcript, by his own hand, to this House.

*Mr. Reynolds.* I am against your taking it; but have a transcript brought by the Lord Chief Justice to be delivered at the table.

*Mr. Croke.* The Judges have done their duty in desiring your advice. This House has ever taken this upon them to

* I find no account of this curious fact. Mr. Speaker "fell down on his knees," in 1641, before Charles I., when, just entering on his "road to ruin," he came to the House to demand the five members, *vi et armis.* See "Orders of the Commons," (1756,) pp. 157, 158.

declare a law. You have power of examining all the records, as in Cole and Rodney's case.* I move that the Chief Justice, at his bringing the record, may express the reasons of his hesitations and difficulties.

*Sir Arthur Haslerigge* called this a cunning motion.

*Mr. Speaker* offered to put the question upon himself.

*Sir Arthur Haslerigge.* I would not have it upon your books that any such question was propounded to the Speaker of the House of Commons, or to this House of Parliament. I will offend nobody yet.

*Mr. Pedley.* Sir Arthur Haslerigge offers rather an order than a question.

*Colonel Cox.* I would have it wholly laid aside.

*Mr. Bodurda.* You put limitations upon the Lords' House; so that they have no power on this case. I would have it adjourned to the Lords' House.

*Mr. Turner.* I expected not such a motion this morning, and would have it laid aside. When the sole legislative was in this House, it had been proper; but now, you are upon another footing of account.

*Mr. Cartwright.* I move that it be laid aside, and that the Judges in the Exchequer Chamber first have the hearing of it.

*Mr. Edgar.* I know not yet what the House of Lords is. I would have it laid aside at present.

*Serjeant Seys.* The Court declare, that it was usually, without writ of error, brought into the Parliament. It being *primæ impressionis*, there was a privilege in the case. They thought it fit that the case should be brought to this House, because of difficulty.

*Mr. Chaloner.* The Judges desire neither to deny nor to delay justice to any. I hope you will do neither. So I would have the transcript brought hither.

*Serjeant Waller* stood up without making three congees, and before a member, when he was speaking. The orders of the House called to.

* See vol. ii. p. 131.

*Mr. Reynolds* and *Mr. Carew* moved, that the orders be preserved, and that he do his congees.

*Mr. Knightley* moved, that he had done his duty.

*Mr. Steward* moved, whether to put the question or not.

*Mr. Scot.* I wonder to see you so careless of your privileges. Though it was of last Parliament, will you delay justice? For whom do you sit? Is it not for the people of England? If the Judge be willing to bring the case hither, do not you obstruct it. Let the Lord Chief Justice bring the transcript, as was moved, to you, by those that had the honour and leave* to sit here in the last Parliament.

*Lord Lambert.* I incline rather to have it determined in the Exchequer Chamber, as was moved, but would have you not wholly lay it aside; but have a transcript of the record brought hither by the Lord Chief Justice.

*Mr. Bodurda* moved that the question be put, whether the question shall be put.

*Captain Baynes* moved for required, instead of desired.

*Sir Arthur Haslerigge.* It is well enough, and all one.

*Mr. Turner.* I move that the question be put now.

The question being put, it passed in the affirmative.

Resolved, on the main question, that the Chief Justice of the Common Bench be desired to bring hither the transcript of the record depending before them there in that Court, concerning Mr. Nevile and Mr. Strode, late Sheriff of the County of Berks; and that the Clerk give notice.

*Serjeant Waller.* Reported from the Committee of Privileges, that the return of Henry Nevile and Daniel Blagrave is a good return, and that the other return† be withdrawn.

It was called to him to go to the bar and make his legs;‡ for no report could be handed.

*Mr. Hungerford.* Moved that he might report in order.

* See vol. i. p. 262, *note* ‡, ii. p. 316, *note* *.

† Of Whitlock and Thornhill. See *Journals.*

‡ "Do his congees." In one of Prior's tales, when the celestials amused themselves, by visiting a cottager, in the disguise of mortals:—

"Jove made his leg, and kiss'd the dame,
Obedient Hermes did the same."

*Sir Arthur Haslerigge.* The House is possessed of this report, though out of order.

*Mr. Knightley.* Something is left to the discretion of the Committee.

*Mr. Hungerford.* I could not know what would be reported, till he did report.

*Mr. Bodurda,* the like.

*Sir Arthur Haslerigge.* This was but contention. If we can have patience, all the reports may come in. I move that he come up with his three legs.

This he did accordingly, and delivered the report on the left side of the table.

*Mr. Pedley.* I move to know the reasons of the resolution of the Committee, for satisfaction of those that were not there.

*Mr. Knightley.* December is before January.* That is reason enough.

*Sir Arthur Haslerigge.* If I had not been at the Committee, I would also have moved to be satisfied of the reasons, ere I gave my vote.

He reported the whole reasons upon the debate. In the second election, there was no Mayor, no precept annexed, no votes. Force was used to turn out the Mayor, but he continued in his place still. There was but one negative in the Committee, and a full Committee in this business.

Resolved, to agree with the Committee. *Nemine contradicente.*

*Serjeant Waller.* The reason why I did report this first, was, because it brought in a member, which the other did not.

*Captain Baynes* moved to have the pretended Mayor taken up to be punished; else the consequence may be dangerous.

*Mr. Knightley.* They tossed the old Mayor like a dog in a blanket. I would have it referred to the Committee to find

* Referring to some informality in the election of a Mayor.

out some way to punish that Mayor and other Mayors. If this be allowed, your House will be thin enough and certainly break up Parliaments. They promise themselves indemnity.

*Mr. Nicholl* and *Mr. Turner* moved, that the Mayor be punished. The remedy at law is for the Mayor, but there is no remedy for you at law.

*Sir Arthur Haslerigge.* I agree to it; though I thought not to have troubled you. The chest was broken open and one of the seals taken out, and a great many outrages. I would have this Mayor sent for as a delinquent. Members on such accounts, have been kept out seven years. This Mayor has relinquished his place of Mayor, and sits now as an Alderman. I would have him sent for.

*Mr. Grove.* There is no contempt in the Mayor to you. Only the difference arises about the right of election of a Mayor. I would have you proceed no farther.

*Mr. Bulkeley.* I am sorry that your time should be spent about such matters. The Mayor was no wilful transgressor. He was clearly chosen fourteen days before the precept. I would not have him come under such a lash. He was voted Mayor and sworn. They claim that they may turn him out when they please, upon any misdemeanour. They contemn him so that he comes not so often to the bench. The election by him might be clear. The Mayor is an honest good man.

*Mr. Goodwin.* I would not have him sent for as a delinquent, but have it referred to a Committee; this and all business of this nature, to make some precedent in this case.

*Mr. Bodurda.* I would have you lay this aside, lest upon farther examination, you find it fit to undo what you have done, which will not be for your honour.

*Serjeant Waller* reported, that a double return is in Oxfordshire, between Lord Falkland* and Sir Francis

* "Henry Cary, Viscount Falkland, in Scotland," as he is described in the list of this Parliament; as member for the County of Oxford.

Norris, and that the Sheriff being returned a member,* your Committee desires that the Sheriff may be required to attend your Committee.

The House proceeded on the report touching Lord Falkland; and it was moved that the Sheriff, viz. Unton Croke, might attend the Committee; but Sir Arthur Haslerigge excepted against the word attend the Committee. The report is mistaken, it should have been the House.

Henry Nevile came into the House at ten o'clock.

*Mr. Croke.* † The Sheriff last week was ill of a fever; I hear he is somewhat better. I had a letter. He will be here next week. It proved to be a doubtful case; no malice nor design in it. The best counsel were at a stand in it. He will have his deputy and all witnesses in it ready by Thursday.

If it please God to give him strength, he will attend you. Send it back to your Committee. I desire all the favour and tenderness that may be.

*Mr. Knightley.* I move, for favour, and not to have it postponed; but refer it back to your Committee, and appoint a day.

*Lord Lambert.* I move not to have it so—when he has strength; but put it on, three weeks, if he have strength.

*Mr. Hungerford* moved for a shorter day.

*Sir Arthur Haslerigge.* It seems Lord Falkland is a de-

(*Parl. Hist.* xxi. 253.) He was son of the celebrated Lord Falkland, at whose decease in 1643, he must have been very young; and now barely of legal age to sit in Parliament. *Langbaine,* who describes this Lord Falkland, as "eminent for his extraordinary parts and heroic spirit," relates the following anecdote, which Lord Orford has repeated.

"When he was first elected to serve in Parliament, some of the House opposed his admission, urging that he had not sowed his wild oats. He replied, 'if I have not, I may sow them in the House, where there are geese enough to pick them up.'" See "An Account of the English Dramatic Poets," (1691,) p. 197; "Royal and Noble Authors," (1659).

Lord Falkland represented the City of Oxford, in the Convention Parliament, (1660,) and the County, in 1661. He died in early life.

* For Oxford City. † The other member for Oxford City.

linquent.* Give the devil his due. Admit him, and then cast him out tacitly.

*Sir John Lenthall.* You cannot order the Sheriff to be well. I move that the under Sheriff attend in the interim.

*Sir Arthur Haslerigge.* The under Sheriff cannot be answerable for all. How will you have information, if the High Sheriff be sick? You cannot judicially send for the under Sheriff. I would have you declare; if the High Sheriff cannot, then the Under Sheriff shall attend.

*Serjeant Maynard.* A double return is undoubtedly a misdemeanour in the Sheriff. Give the Sheriff a day, that if he be well, he may attend; otherwise, dispense with it. Your Committee may proceed without either Sheriff or Mayors, for there they appear but as witnesses.

Resolved, that Unton Croke, Esq. Sheriff of the County of Oxford, be enjoined to attend the Committee of Privileges and Elections, on or before Saturday next. And if, by reason of his sickness, he be not able to attend the Committee by or before that time, that his Under-Sheriff do then or in the meantime attend the said Committee, to give an account to the said Committee, concerning the said double return.

*Mr. Secretary.* You have spent some time about the forms of your House. It is now time to mind other things.

It pleased God to put an end to his Highness's days. Sad things were expected by that stroke. God has given that blessing of a son, in his stead, who has the hearts of the people, testifying his undoubted right of succession. This can be looked upon as no other thing than the hand of God, so putting down the late King's family. He raises the power out of the dust. It is his prerogative royal.

* He probably, soon after this, adventured for Charles Stuart, or, at least, came under suspicion. This seems probable from the following order of the restored Long Parliament, a very few days before its dissolution, and when the Presbyterian Royalists were triumphant.

"March 6, 1659, 60. Ordered, that the pistols, saddles, and other goods that were taken from the Lord Falkland, in or since August last, be restored to him, and that he take them, where he finds them." *Journals.*

It is not unbecoming this House to recognize this mercy; to acknowledge his now Highness to be the undoubted successor. In Queen Elizabeth and King James's reign, there were such recognitions.

Another thing; I hear great endeavours abroad to beget divisions and troubles amongst us; some contriving abroad to make addresses to this House to change the Government. To prevent which, let the nation know we are all of a mind in the Government; all agreed in the foundation: that those that offer to pull out any pin of this building, may see their discouragement, that they have their question with the Chief Magistrate and this Parliament.

I have a short Bill for a recognition to this purpose.

This he brought to the table.*

*Sir Arthur Haslerigge.* I am sorry I have a cold, so that all cannot hear me.

This is not seasonably offered now. The more I hear of

* "In a full House Mr. Secretary very suddenly and abruptly stood up and told us that he confessed that the forms of the House were first necessary to be settled; but that now it was time to speak of something else, of which he would make us a beginning. He told us that the death of the late Protector was a heavy stroke to these nations, but that it had pleased God to repair it, in some good measure, by the happiness of his successor; wherein he could not but admire the providence of God, in pulling down and in setting up, and instanced in the fatal and irrecoverable taking away of the late King, and setting aside of that family, and setting up of this, by the unanimous consent of the whole nation, and therefore moved it as a thing very seasonable for us, as the representatives of the nation, to recognize his Highness's title to the succession of the government of these nations of England, &c., and this was according to former precedents, in the beginning of the first Parliaments of former princes. That he had certain intelligence that there were strong endeavours abroad to make disturbances amongst us, and that he knew petitions were already framing abroad to change the government. Therefore, it would be very expedient to let the world know we are all in this place agreed upon the foundation, and that if any will go about to pull out any of the pins of the Government, they may certainly know they are to contest with the Lord Protector and Parliament. And so told us he had brought in a Bill of Recognition, to the same purpose, and prayed it might be read, and tendered it to the Speaker." *Goddard MS.* p. 113.

dangers and fears abroad, the more have we need to take care at home, within these walls. We need not fear any thing that the people shall here represent for their good. Any thing brought to us, if bad, punish them that bring it. You have many things to do, and have done but one thing. The next is a Committee of Grievances; the next, Religion.

Wonderful things were taken away by that victorious Parliament. Addresses to the King were nine times refused; then they took the King away. We were a glorious Parliament for pulling down. I hope this will be glorious for setting up. I hope all will agree, that whatever we pulled down, was good and necessary to be pulled down. We turned out nocent and innocent, as unnecessary, unprofitable, and unfit. These are great works to do. My head begins to be a little hot. Let us see what was done since we went out. He that is gone promised us an account. The army are our children; they came from us. We are bound to provide for them. We have one that is our prince, *princeps*, our chief. I never knew any guile or gall in him. I honour the person. I will say no more.

Let us not read a Bill of this consideration till after the fast; that we may not be put out of our right way, a Committee of Grievances. We never pulled down, but by prayer and humiliation; let us not build without them. Let us see our materials. Have we glorious foundations in our buildings? Let us name our Committee of Grievances, first.*

* "Sir Arthur Haslerigge rose up, and told us, the thing might do well, but this was not the season for it; that the more fears there rose from abroad, the more need there was to walk circumspectly; but for the people at home, there was no fear for any thing they could molest us with. That we have not yet settled those General Committees of Religion, Trade and Grievances. That the last Long Parliament was the rarest Parliament that ever was, in pulling up. They knew all the oppressions of the single person, and were sensible of it, and therefore they turned out the late king and all his family, nocent and innocent together. That we have been all this while a pulling up, and no foundation yet laid. He that is lately dead, promised an account of our treasure, army and navy. We must have an account of them. Besides, there is no business of concernment to be done before the fast be over; that we have

*Mr. Trevor.* I would not have a delay put upon such a Bill. The first weapon is a delay. The honourable person has better reason to know your danger. It ought not to go from you till it is read. Read it now, and appoint the second reading after the fast.

*Mr. Drake.* There was a general fast before. We have an inclination. God has observed the intercession of his servants. If there must be any thing brought into the House to know us, where we are, if any thing, this foundation. A Committee of Grievances should have done first! Not so ingenious.

It is a greater honour to be good at building up, than at pulling down, as he said of the Long Parliament.

We have Parliamentary grounds, precedents, and reasons. We are sworn to it, we but say what we have sworn before.

*Mr. St. Nicholas.* You are upon a point of government, upon that which is grounded upon a late act, the power of nomination. There are many things previous to this matter. I can read the Act, how that has been observed. It may concern him that is at the head. First, seek God.

*Mr. Scot.* You anticipate, if you now fall upon this Bill. I suppose you will not fish before the net. It is irregular to resolve first, and then inquire. I am not prepared to speak, as those that haply know of it. I was so tender yesterday as to put off the Scots' members debate. I should not have been free to have gone that length, had I thought of this. I profess myself to be a weathercock of reason. I would have them confirmed by Act of Union. There is much matter about the distribution, order, and manner of their coming in to be considered.

First, model your legislatures; one hundred kept out the

sought God in this, and all other matters of this great weight and concernment. We have a prince, *princeps*, for so he is, that hath no guile nor gall. But yet we must proceed in the fear of God, and therefore prayed that no Bill might be read, until the fast be first spent, and then that we may not be put out of the right way, that is, that nothing might anticipate the nomination of the Grand Committees." *Goddard MS.* p. 113.

last Parliament for want of integrity to the Instrument of Government, whereof they became guilty themselves in the Petition and Advice carried but by three suffrages. I would have that settled first.*

*Colonel Birch.* I was one of those that was not acquainted with the Bill now offered. I waited for reasons against it. I went home, rejoicing that the members of Scotland and Ireland were received hither so unanimously. I take it for granted they are admitted into oneness with us. I look upon it as a return of the nations. I can by no means admit us to a breach.† If it should be heard abroad that though but for a day this Bill was laid aside! I would not have it laid aside for an hour. I am readier to pour out tears than words.

*Mr. Weaver.* Mr. Scot moved not against the union. There is no foundation of law for the distribution of the members. I hope we shall all in due time agree to this Bill. Suspend it two or three days till the fast be over; but first consider to corroborate those gentlemen that have not yet a legal authority; to prevent laying it in your dish hereafter that threescore are not authorized.

*Mr. Solicitor-General.* I expected no debate in this business. Is this any more than we are sworn to at the doors? From Henry IV. and all downwards there was ever a recognition at the entrance of all Parliaments.

*Mr. Salway.* I move the question, whether this question shall be put.

*Mr. Knightley.* This Bill comes in by surprise. I am sorry it did come in; but, seeing that it is so, I would not have a question put upon it.

A Bill was brought down from the Lords' House about

* "Mr. Scot, *contra*, especially until the fast be over, for it was not good fishing before the net, and especially because it was not yet determined what shall be done with the Scotch and Irish members, whom it was necessary to take into the recognition, in case we admit them, but till that was determined it was not fit to proceed in this." *Goddard MS.* p. 114.

† "Colonel Birch admitted the Scotch members to be received, and therefore prayed that might be no reason to delay the reading the recognition." *Goddard MS.* p. 114.

the Queen's jointure. There was no negative upon it, but it was read twice that day.

I had not been here if I had not thought his Highness to be Chief Magistrate. I am sorry to hear such pulling down repeated here.

The Bill was read accordingly.

*Mr. Attorney-General.* I move to have it read a second time to-morrow.*

*Mr. Knightley.* I am for Monday se'nnight, at the calling of the House. I would not have the business cool, but that we may gather heat for it.

*Mr. Chaloner.* I find, by no law, that the members of Scotland and Ireland should sit here. I have no disaffection to them. The gentlemen have done you no wrong in tendering their service here. If they have not power let us give them power.

The fault is in your Commissioners of the Seal. Let them be punished. I would have Monday se'nnight for the second reading.

*Mr. Attorney of the Duchy.* I would have no coldness—no hesitation in this business. I would have it read a second time to-morrow.

*Sir Arthur Haslerigge.* That gentleman may well move for the second reading. He may know it. I do not. It is a matter of great weight. I would have a convenient time, that we may serve posterity in this generation.

It is fit every one should have a copy of it, (I have known it denied,) if you will bring in a Bill of this nature before a Committee of Religion be brought in, or grievances.

I understand the grounds formerly gone upon. There never was such a number of gentlemen so freely chosen. I move that Monday se'nnight be appointed for the second time, and that we have copies.

Mr. ——— (a young man) stood up, and told a story of

* "After the reading the Bill, the Attorney-General moved that it might not lie long before the Speaker, but that it might be read to-morrow morning the second time, but it was put off for the second reading until Monday morning." *Goddard MS.* p. 114.

Cain and Abel, and made a speech; nobody knew to what purpose.

*Mr. Steward.* We are doing no more all of us now than we have every one of us done. I cannot blame those that desire time; for they that must have argument had need have time to seek it.

*Sir Arthur Haslerigge.* It is a reflection; for he knows not whether I seek arguments for or against it.

*Sir William Wheeler.* I move to read it the second time to-morrow. This has been in all times since Henry I. Copies ought to be given. It was done in the Long Parliament; yet the Clerk cannot without your order.

*Captain Baynes.* I am not against the Bill, if nothing else be in the belly of it.

It determines the negative voice and the other House. To set up a House that has not so much interest as two knights! You have disputed this with blood and treasure, and leave it now, you will never come to it again. You will either bring the Government to your property, or your property to the Government. I had rather give a third part of what I have than leave things so dubious. The balance will be too great for the people; and if the army turn mercenary, farewell property.

*Mr. Boderda.* That gentleman moved improperly to speak to any particulars of a Bill at the first reading. I desire to-morrow may be the second reading, rather than Monday se'nnight, because, as a worthy person, Sir Arthur Haslerigge, said, Monday is before Monday se'nnight.

*Mr. Trevor.* I wish Captain Baynes's motion could take effect, that we stand in no need of an army. I hope he has always been so careful of the charge of the nation as he seems to be now.

*Mr. Starkey.* I would have no delay. We reflect upon ourselves; on the oath we have taken at the doors.

*Mr. Manley.* The last Bill of Recognition was read the second time, the same day. I would have no delay; and, because I see such an unanimous consent, I have a Bill in my pocket for enabling the Scotch and Irish members.

*Sir Arthur Haslerigge* stood up to speak to the order of proceeding, and launched into the merits.

*Serjeant Maynard* took him down.

*Mr. Turner* moved for a middle day.

*Mr. Reynell.* If there were but a bare recognition like that at the door, I should not say a word. The honourable person that presented the Bill, said he would have things so settled, that he that touched a pin of the building might have a sense of the displeasure of this House and the Protector.* Therefore time is needful. I move for Monday se'nnight.

*Lord Lambert.* I like the thing, but not the haste. I would have something go hand in hand with it, touching your own privileges and the people's rights. A business of this nature may well be referred to a Grand Committee. I thought you would have appointed your Grand Committees, first those of trade, religion, and grievances. It is seasonably offered, but it is not for your service to be too hasty. I desire that we may all study moderation.

It was ordered to be read on Monday next,† without a question. The House rose at one.

* See *supra*, p. 26.

† "A Bill entitled an Act of Recognition of his Highness's right and title to be Protector and Chief Magistrate of the Commonwealth of England, Scotland, and Ireland, and the dominions and territories thereunto belonging, was this day read the first time; and it is ordered to be read the second time on Monday next." *Journals.*

"The 1st of February," says Mr. Bethel, "a Bill was brought in by one of the then Council, under the pretence only of acknowledging the Pretender to be Protector, but with such words couched in it, as had no less in them, than the admittance of the then Chief Magistrate, and the persons then sitting in the other House, unto the full power, privilege, and prerogatives of the ancient kings, and ancient House of Lords, which the court-party designed to have carried undiscovered.

"The Bill was read without much difficulty the first time, which encouraged those of the Long Robe, related to the single person, to press for the reading of it again the same day, to the end that being the next day read the third time, as was designed, it might then have passed into an act; but, in opposition to that, some who were more careful of the liberties of the people, than those of the Long Robe ordinarily are, moved,

The Committee of Privileges sat in the Star-Chamber, and some members being crowded, it was moved and resolved, to adjourn to the House. Mr. Serjeant Waller had the chair. The business of double returns between Luke Robinson and Colonel Lilburn, against Mr. Philip Howard and Mr. Marwood, was debated, and the Committee inclined for the latter. This day fortnight was appointed for a full hearing.

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*Wednesday, February* 2, 1658-9.

*Mr. Speaker* took the chair at nine.

Mr. Cooper prayed.

*Sir Walter Earle* and *Captain Hatsell* moved for settling the standing Committees.

*Mr. Trenchard* seconded.

*Dr. Clarges.* No private Committee can sit while a Grand Committee sits.

*Mr. Knightley.* If forty be but in the House, to make a Grand Committee, other Committees may sit.

*Mr. Speaker.* A Committee for Grievances and Courts of Justice, are all one.

Resolved, that a Grand Committee of the whole House, do sit in the House, for Religion, on Monday; for Grievances and Courts of Justice on Wednesday; and for Trade on Friday; weekly, in the afternoon.

*Mr. Neville* stood up and was going to say something of what was done yesterday; but stopped, the House being acquainted that Major Audley was at the door.

that, according to rule, in cases of such weight, it might be referred to a Grand Committee of the whole House; and when that would not be granted, that the second reading of it might at least be put off for some days, and liberty given in the interim to the members, to take copies of the Bill, that, considering of the business, they might be the more prepared for the debate; which was yielded unto, and the 7th of February appointed for the second reading of it." *Brief Narrative* (see *supra*, p. 11, *note* *) p. 335.

*Sir Arthur Haslerigge* moved, that he might not kneel, at first.

*Mr. Bish* moved for a little time, till his counsel came.

*Major Burton* moved to name the Grand Committee; but was called down.

*Mr. Neville.* I am glad that what you did yesterday passed with so much unanimity. I would have something go, hand in hand with it, for the liberties of the people. The two great flaws in the Government, one in the sovereign power, and another in the executive power, were the negative voice* and the militia.†

The King would not concur, which produced war; and it was determined on the people's side. I would have nothing of aspersion. It is in good hands now; so that the propositions sent to the King, in all things, will not agree. As to the propositions of the militia, about putting it in Sheriffs and Deputy-Lieutenants, I would have a Committee of able persons appointed to prepare a law, that your negative voice may not be many, without doors,‡ and the militia be entrusted in safe hands, that it may not be oppressive. I shall not bring in an Act, but offer my thoughts.

*Mr. Starkey.* Those things are settled by the Petition and Advice. The negative voice is of great use on either of the three co-ordinate powers. I never could find any law to the contrary. We are met for peace. By law the King had a negative voice, on whatever was debated or resolved here. We ought to keep singly to the Recognition, and not perplex what is either clear, or ought to be meddled with more seasonably. The gentleman says the militia is settled by the Petition of Right; so he has answered himself. And if it be settled, let us not dispute it over again.

*Sir Arthur Haslerigge.* I hoped never to have heard this motion in this place, that the militia and negative voice are not in this House. I wonder at the gentleman's modesty, that he brought not in a Bill. I brought in the Bill for the

* See vol. ii. p. 451, *note* §. † See *Ibid.* p. 435, *note* *.

‡ Referring, probably, to assemblages of discontented people.

militia to be in the House, and———*, and I was sent into Leicestershire, where we met the King, about settling the militia, and the King not condescending, we fought it out.†

I have a complaint to this House, which I hope in due time will be heard; my being kept out of the House,‡ who was always faithful.

A strange thing that the top stone shall be laid first. I would have this business put off till after the fast. I have met with the printed speeches.§ If you please, I will say somewhat to them. We are in a sad case; our armies in great arrears, and great need of navies. There is a promise of accounting to us,‖ of which we have not heard yet. I went up as one of your servants, to see in what order we should be. I saw where the Lords were. I asked where the Commons should be, and they said, at the bar; where were servants and footmen; and to stand amongst them we must have begun to rub my Lord. I believe many members did forbear to go up.¶ I would have the speeches read, if you please.**

* Blank in the MS.

† I am not aware to what event in the war this speaker refers.

‡ See vol. ii. p. 347, *note* ‡, *ad fin.*

§ Of the Protector and Lord Commissioner.

‖ See *supra*, p. 9.

¶ Mr. Bethell says, that "not above twelve or fifteen went out of the House." *Brief Narrative*, p. 334.

** "Wednesday, February 2.—By this time it began plainly to appear that the Commonwealth party and the Protector's or Court party, began to vie stakes, and pecked at one another in their light skirmishes.

"It was moved by Mr. Neville that it might be declared by this Parliament, that there is no negative voice in any single person whatsoever, and secondly, that the militia of the nation may likewise be declared to be in this House.

"This motion was opposed by some, as too early and unseasonable. Sir Arthur Haslerigge was of the same opinion, but thought it necessary not to be deferred longer than until the reading of the Bill of Recognition the second time.

"Which concession coming from the head of the party, did shew that it was not moved, as apprehended seasonable at that time, but to let the Court know that they were not asleep, nor less diligent in their business, but ready to give them a Rowland for their Oliver; for the design of it

*Mr. Trevor.* I wonder to hear this motion seconded by the worthy gentleman who moved for nothing to be done till all Privy and standing Committees were settled. He says Providence has so ordered it, that the case of the militia and negative voice, are settled by the law, if any law be. It is said, it was the beginning of the quarrel between the King and the Parliament. I hope it shall not be the quarrel between his Highness and the Parliament. That gentleman had it in his choice that we might have stood bare to him.*

was, that it might attend the Bill of Recognition, and go on, step by step, with it. And lest they should surfeit the Protector too much with kindness in the Bill, hereby resolved to give him a bitt and a knock; at least involve the Court in this labyrinth, that either they must not make that speed with the Recognition which they intended, or look that what promotion they made of the one, it would be expected that the like should be in the other.

"Sir Arthur Haslerigge desired it might be laid aside until Monday, that it might be ready at that time, either to set forth, or to stay still, as the Recognition should do.

"And quitting this debate, he took occasion, from the printed speech of his Highness and the Lord Fiennes, to let us know that by them it did appear to him that the nation was but in a very sad condition. There were great fears from abroad, great arrears at home. It was fit to take into consideration how, and which way, we shall have a just account of them. He prayed, if the House thought fit, the printed papers might be read. He had known the like before that time. Indeed, the first day of the Parliament he had been in the Lords' House, where they said a speech was to be heard. He asked where he should stand. He was answered beneath the bar. What, says he, 'Among the foot-boys.' He had known former Parliaments take offence that some shall sit, and some shall stand, bareheaded, and, therefore, for his part, he did not stay. Therefore he prayed again it might be read, that we may understand in what condition we are, before we proceed upon any other matter." *Goddard MS.* pp. 115, 116.

* Referring to his right to sit in the other House. See vol. ii. p. 347, *note* ‡.

"Mr. Trevor wondered at the debate this day. Yesterday, when a Bill of far greater concernment was brought in, then, the House was not settled, Committees not named, as was objected; and whereas Sir Arthur had said that the negative voice, and the militia, were foundations which we had fought for and won, Providence had clearly and demonstratively settled them, not by the sword, but by a law, if

*Sir William Wheeler.* I move for a Committee to prepare the Bills under consideration for the people; as the law for marriages and probate of wills.*

Major Audley was called in; and standing at the bar,†

*Mr. Speaker* opened the information against him, and said the House was willing to hear him say for himself, and had brought him to the bar, not upon his knees.‡

Major Audley. I have not been used to speak for myself, either elsewhere or in the House. I should be sorry to give offence by speaking. I have stated the matter of fact in a Petition, if it please the honourable House to hear it.

He was commanded to withdraw.

*Mr. Knightley.* It is not parliamentary to receive a Petition, before you hear what he can say.

*Mr. Trenchard* seconded it.

*Mr. Scot.* Take his answer *in scriptis*; because he may be afraid of the intemperance of his language. He may confess and avoid, confess and justify, or confess and mitigate.

*Sir Arthur Haslerigge.* I wonder to hear that motion from a gentleman that has sat so long in this House. The gentleman ought to confess or deny. If he confess those

there were any law now in being. He therefore desired we might proceed to the business of yesterday, which was nominating of Committees, which, in truth, had been done before his coming in, namely the Committees of Religion, Trade, and Grievances, and Courts of Justice." *Goddard MS.* p. 116.

* See vol. ii. p. 38, 44, 68, 74, 464, *note* *.

† "The Serjeant, with the mace, stood on the right hand of him within the bar." *Journals.*

‡ "Mr. Speaker informed him, that there had been a complaint against him of the great violation of the privileges of the House, in the abuse offered by him, in Westminster Hall, on Thursday last, to two of the members of this House, Mr. Bish and Mr. Turgis, that serve for the borough of Gatton in Surrey; and that he had given Mr. Bish very foul and contumelious language; had called him rascal, and base rascal; and had given him other provoking language, tending to a duel. And that he had likewise abused Mr. Turgis, with like contumelious and opprobrious language; and had called him 'base fellow.' And the House, being willing to hear what he had to say for himself, had brought him to the Bar, in this manner first, and not upon his knee." *Ibid.*

words, they will scarcely be avoided. This gentleman has had more favour than stands to any upon your books.

*Sir Walter Earle.* I never knew the like, that a delinquent should bring a framed discourse in writing. This will be an ill precedent.

*Mr. Scawen.* I never knew a delinquent come to the bar, and not kneel.

Major Audley was called in again, and required to give a positive answer, guilty or not guilty?

Major Audley. I offered my defence in writing lest by my tongue I should offend while defending myself. I deny the charge in the main of it. It arose upon an election. I was duly elected, and being informed there was a double return, I applied myself to a gentleman to present my Petition. My passion and natural temper being worse than other men's, I said I would lodge a Petition at the cross bar against the election. I desired him to withdraw and not let people be witnesses of our follies.

He said I was not a gentleman, I had no arms:* I was a turncoat. So that I was provoked to those languages. But the challenge I deny. I had no intent. I profess I knew him no member of Parliament; I thought there had been a double return. I had rather acknowledge myself guilty as much as I am, than reflect upon him that is your member.

To the other gentleman I said not a word; (but asked him how long a lease he had of sitting here) meaning only to prosecute. I acknowledge myself accidentally, not professedly, an offender to this House. I have faithfully served you these eighteen years, and was never guilty of being a turncoat. That sticks with me.

*Mr. Knightley.* The gentleman has given you a very ingenuous answer, and shows himself an able person. I would have the gentleman that informed, produce his witnesses.

*Mr. Lechmere.* I observed much of relenting. He asked pardon of the gentleman, as a gentleman, as a member of this

* See how a "King of Heralds" accommodates the *novi homines*, in such a case, vol. ii. p. 456, *note*.

House; or of the House, in public. As the pardon is asked publicly, you should forgive publicly. He is a perfect man that can bridle his tongue, and he that speaks much must sometimes repent it.

*Mr. Manley* stood up.

*Sir Arthur Haslerigge*, underhand, said, 'Another lawyer.'

*Mr. Leckmere* took exception to this, and said, 'It is a reflection.'

*Sir Arthur Haslerigge.* I spoke it for no reflection; but out of a desire to hear any of the Long Robe speak, which I would at any time sit down to hear.

*Mr. Manley.* Major Audley was a civil gentleman when he quartered at my house. His confession was ingenuous at the bar. If you please, pass by the business.

*Sir Arthur Haslerigge.* The complaint is exceeding worthy your hearing. Many gallant young gentlemen, I see, in this House, who may be here when I am gone. I would not have the blood stick on your chair. I think the acknowledgment is not sufficient. I would fain read the proverb well. "Not right pity, spoils the city." If one member of this House should challenge another, I hope he would be turned out and sent to the Tower.

A competition about an election! It is said the information is not well proved. A challenge may be whispered. The law favours passion, as in the case of manslaughter; but the manslayer goes not without punishment. In the case of Mr. Holford,* he kneeled at the bar, for one word, and was sent to the Tower, and you can do no less than send this gentleman to the Tower. I have no end but your own honour, and to prevent the fall of some young gentlemen in this House. If the challenge were true, I should disable him for sitting in this House.

*Sir William D'Oyley.* The charge is not made out. I would have it referred to a Committee.

*Mr. Steward.* His confession did rather imply an ingenuity than a guilt. His calling him aside was not to challenge; but

* See *supra*, p. 15, *ad fin.*

lest their follies should be conspicuous. I would have it laid aside.

*Mr. Bulkeley.* You cannot so easily lay it aside. This person has put his hand to the plough and drawn it back. He was in holy orders. The question is, whether you will believe a member, or a stranger. I shall put a very great difference between the testimony of the one; and the other, that has forsaken his profession. I heard a gentleman of this House say he heard him say, "Let us step to the other side an hedge, and that will decide the controversy." This tends to blood. It comes regularly before you to vindicate this gentleman. He that dares do least in this way, dares do most in another way. When justice is done, I shall be as much for mercy as any man. A gentleman heard him say more.

*Mr. Solicitor-General.* I move that those gentlemen that spoke the last day may be heard, and their evidence.

*Mr. Wharton.* I was passing through the hall, and heard Major Audley say, Mr. Bish was an unworthy fellow, and that he did not challenge him, but if he would go the other side of an hedge, that would determine it.

*Mr. Bish* repeated the same story as before; saying, "I told him he was an uncivil man, which was all I said."

*Sir John Lenthall.* Wherever an injury is done to any member, it is done to the whole. I would have him as highly punished as any man that has offended in this nature. He is a man that when authority was in his hands did very much oppress the country.

*Major-General Kelsey.* I would have no aggravation. He is a scholar, and might at first exercise as a minister. It is not unchristian to do so. When a man finds himself unfit, it is christian to forbear the calling, rather than to be unprofitable. I have acted in that country, and never heard him called an oppressor before.

He apprehended himself to stand in an equal capacity, and ill language did flow from both. It is an offence in its own nature, but I would have all circumstances taken in, to pass a right judgment. I would have it referred to a Committee to have the true state of the case laid before you, ere you pass judgment.

*Mr. Raleigh.* I would have Mr. Sturges heard, that is most concerned in the business. I never heard him said to be an oppressor of his country. He was not returned.

*Mr. Sturges.* I intended not to have troubled the House with it, but that a member advised me to it for the conservation of your privileges.

He repeated the same story that he did the other day, and said he would not misinform the House.

*Serjeant Maynard.* If any member did inform you of any thing, it was never your use to refer it to a Committee. I would have nothing laid in his dish of what he has done, otherwise. It needs no aggravation. It is a challenge. Do justice boldly. Vindicate your privileges, lest from twenty you come to twelve.

*Mr. Solicitor-General.* He was in passion. He then might well forget what he said. It is clearly a challenge, and if you go no further than to send him to the Tower, you are merciful.

*Mr.* ———. You will do him a courtesy to send him to the Tower. He has a house, and a great office there.

*Mr. Knightley.* I would not have him go thither, for exorbitant fees; but sent to some prison in Surrey. I would have him disabled from bearing office.

*Sir Richard Temple.* I shall not speak to the matter, but to the manner of his punishment. You will not think it fit to send him to any other place than the Tower. I have heard much of his ill deportment. I would have him disabled from all office, civil and military. He has forfeited his mercy by disproving his ingenuity.

*Colonel Okey.* I have marched with him several years, and never saw or heard any thing against him.

*Mr. Hungerford.* This needs no aggravation. The place is too good. You sent Sir John Stowell to the Gatehouse. I would have him sent thither. I am not of that gentleman's opinion that said he might draw back from his profession.

*Mr. Starkey.* The Tower is too honourable for an ordinary offender. I would have him in the Serjeant's custody,

where he will appoint him; which will exercise his purse as well as his patience.

*Lord Lambert.* I move that the gentlemen concerned may withdraw.

*Mr. Bulkeley.* Those gentlemen are not before you as objects of your justice, so ought not to withdraw.

*Mr. Trenchard.* The gentlemen ought, in modesty, to withdraw, though there be no question upon it.

*Sir William Wheeler.* I would have him sent to the Gatehouse.

*Captain Baynes.* It is not usual for gentlemen concerned to press a business after the person have so ingenuously acknowledged. I would have his punishment put off till the question about the election be determined, lest you punish the people as well as him; and let him, in the meantime, remain in the Serjeant's custody.

*Sir Arthur Haslerigge.* I would have the Tower his prison, as most honourable for this House; and the second question to be, to disable him from sitting in this House; for I must ever be tender of your privileges.

*Mr. Turner.* You have testimony from three witnesses, where one is sufficient. Nay, *pro bono publico*, a man's self may be witness in an indictment where no damages are given. There is *misericordia princeps.* It is not justice to yourself. You are the great conservators of the peace. I move that he be put out of the Commission of the Peace,* for he has apparently broken his trust.

*Lord Lambert.* He has done you good service. I am witness of it. It does not amount to a challenge. It is a coarse business; scurvy language; a thing in itself less ingenuous than a challenge. I would not have you exercise the utmost severity to an old servant of yours. I would have him only sent to the Tower. Sir John Stowell: he was long in arms against you.

*Mr. Eyre.* I desire not to add affliction to misery; but I conceive it was not improperly moved you by Mr. Turner

* For the county of Surrey." *Journals.*

that he be put out of the Commission of the Peace. He is a judge of challenges; and though it be not a challenge, yet it is a provocation. The true valour of fortitude consists not in passion. He may be fit for the military commission, though not for the peace.

*Mr. Raleigh.* This gentleman is my countryman. I never knew him do any thing on the bench unworthy. I think your punishment is great enough, without addition.

*Mr. Henley.* The offence is heinous. That he is a servant to the Commonwealth makes his offence the greater. It is against his duty and his trust. Especially, as an officer, he ought to give the better example. Great men commit things with a hundred hands. A little star may twinkle in and out, but an eclipse of the great luminaries is more conspicuous. I would have him, at least, turned out of the Commission; and that you would be so tender of your privileges, and bear such testimony against all offenders of this kind, as to let them know they kick against the pricks.

*Mr. Hungerford.* Leave it to the Lords Commissioners, upon your sense, to put him out of the peace, if you please. *Nemo bis punietur pro uno delicto.* I think it but fit to be done; but not by you, and let the other punishment suffice.

*Mr. Grove.* It is little enough to put him out of the Commission of the Peace. How can he make others keep the peace that is in such a high measure a breaker of it himself?

*Colonel Okey.* I am loth to trouble you again on this business. I am sorry to see those reflections, that he is fitter to be a soldier than a Justice of Peace. I see it will be a crime to be an army man. Is the expense of our blood nothing? The Long Robe are very —— (but this he said underhand.)

*Mr. Chaloner.* The punishment is enough.

*Mr. Gewen.* The punishment must be proportionable to the offence, *in terrorem,* to hear and fear. I would have him put out of the Commission of the Peace.

*Mr. Bulkeley.* This seems more necessary than any other

part of the punishment. There is a great difference between a sudden rash act and a pursuance of it, day after day, as Mr. Wharton said. The next morning after I heard this, I heard of some further addition. I would have him put out of the Commission for ejecting scandalous ministers.*

*Mr. Starkey.* I am against extending the punishment, till the offence be better attested than by one witness.

*Mr. Goodwin.* These gentlemen are my near neighbours. You have done justly in sending him to the Tower. I have known him a long time. In the Long Parliament he did you faithful service. For a slip of passion you would not punish him further.

*Mr. St. Nicholas.* Put the question, whether the question shall be put.

*Mr. Knightley.* When you send a prisoner, express the cause; lest any of us be laid by the heels and know not for what.

*Mr. Bodurda.* I move that the cause of his imprisonment be expressed, and the other question waved; for, if you disable him from being a Justice of Peace, you must make a previous vote that he shall not be a member.

*Mr. Turner.* I move the question be put for disabling him from the Commission of the Peace.

*Captain Hatsell* moved that the question be now put.

*Mr. Speaker* declared for the *Noes.*

*Sir John Lenthall* for the *Yeas.*

The *Noes* went out.

*Noes* 173. Mr. Goodwin and Mr. Fagg, Tellers.

*Yeas* 155. Sir Thomas Beaumont and Mr. Henry Fitz-James, Tellers.

So the question passed in the negative.

Major Audley being called in, received his judgment on his knees at the bar; after the Speaker had made an harangue touching the *plaga linguæ* as well as the *plaga dextræ,*

* In the Protector's Ordinance, Aug. 29, 1654, the name of "Lewis Audley" appears among the Commissioners for Surrey.

&c. that he should stand committed to the Tower during the pleasure of the House.

The House rose a little past twelve.

I could not attend any Committees. I question if any sat.

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*Thursday, February* 8, 1658.

I came not till prayers were done, and I found the House engaged in a debate about Colonel Overton's * imprisonment, upon a petition and printed paper presented at the door by his sister. Upon this, it seems Mr. St. Nicholas had moved, and was seconded by Henry Neville and Sir Arthur Haslerigge; and it was strongly urged by them all, as a great breach of the liberty of the subject, so long and much fought and contended for, and so dearly purchased.

Lord Fairfax, Colonel Morley, and young Mr. Porter, came into the House, and were all sworn together.

Mr. Waller, a member for Scotland, was made Serjeant at Law, so that he could not attend the chair of the Committee of Privileges.

*Sir Arthur Haslerigge* moved, that Lord Chief Justice St. John waited at the door, and so took Captain Baynes down.

The Lord Chief Justice was called in, and said, in obedience to this House he had brought a transcript of the record, which was examined, as also a rule.

*Mr. Reynolds* called for the Report, and moved that it might be postponed till Overton's business was over.

*Captain Baynes.* The unhappy wars have made us neglect our liberties. I hope we shall be more tender. It may be the gentleman has deserved his imprisonment. There was no judgment against him for perpetual imprisonment.

* "Major-General Robert Overton, prisoner in the Isle of Jersey." *Journals.* See vol. i. p. 357, *note* *.

*Mr.* ——— moved, that he being reduced to straits by his imprisonment, have part of the contribution upon the fast day; but it was rejected.

*Mr. Knightley.* If this gentleman be nocent, why was he sent away and not brought to trial? If innocent, the judgment is unjust to detain him.

*Mr. Starkey* and *Mr. Fowell.* The question is not ripe for your judgment, unless the gentleman had first appealed to the Courts of Justice for a *habeas corpus.* It does not appear that has been denied.

*Mr. Reynolds.* The liberty of the people ought to have *festinè, remedium.* This is a *habeas corpus* that you are about. Jersey is part of France;* so it is a moot point whether a *habeas corpus* lies. Alured was kept twelve months close prisoner, and brought to a court martial, and after that, six months kept close without receiving a letter so much as from his wife.†

Resolved, that the Governor of the Isle of Jersey, or whoever has the custody of Colonel Overton, do bring him to this House.‡

*Colonel Alured* moved for the Commissioners of the Admiralty to send a frigate for him, for fear of pirates. He cannot come without danger.

* The inhabitants of Jersey, though subjects of England, are governed by Norman laws, and their language is French." *Crutwell.*

† This military officer, one of the victims of the late Protector's jealous and justly merited apprehensions, was, no doubt, Colonel Matthew Alured, a member in this Parliament for Heydon; who appears to have been actively engaged during the war, and who, according to *Whitlock,* after the restoration of the Long Parliament, was "appointed Captain of the Life Guard to the Parliament and Council." *Memorials,* (1732,) p. 681.

*Ludlow* says: "The Parliament gave order for raising a troop of horse for their own guard, and gave the command of it to Colonel Alured, who had been a great sufferer on account of the Commonwealth, and very active for the restitution of the Parliament." *Memoirs,* ii. 670.

‡ "Together with the causes of his imprisonment." *Journals.*

*Mr. Trevor.* This is to triumph before the victory, to send a frigate for him.

*Colonel Okey.* When Burton and Prynne* were sent for, they could not pass, for pirates.

* They were censured in the Star Chamber, and cruelly punished in 1637, with Dr. Bastwick. See vol. i. p. 372, *note* †.

Prynne was committed a close prisoner to Mont Orgeul Castle, Jersey. "There," says *Rushworth*, "by an extra-judicial order, under the Archbishop's hand, the Lieutenant-general was commanded to suffer none but the keepers to speak to him, to intercept all letters that came to him, to permit him neither pen, ink, or paper, either to write to his friends for necessaries, or petition for relief." *Hist. Col.* (1706), iii. 301.

Mr. Burton, a clergyman, was first imprisoned "in Lancaster Castle, none to come at him but the keeper, and denied the use of pen, ink, and paper." Thence "he was transported in winter to the Castle of Guernsey; his wife being prohibited, on pain of imprisonment, from setting her foot on the island." *Ibid.*

To quote Dr. Johnson's *jacobitical* estimate of the patriotic resistance to Charles, well might "rebellion's talons seize on Laud." Yet what an affectation of clemency, like the Inquisitor's, when consigning a victim to the secular arm, did the Archbishop express in the concluding sentence of his "Speech delivered in the Star Chamber," and printed (though only fifty copies) by the King's command,—"because the business hath some reflection on myselfe, I shall forbeare to censure them, and leave them to God's mercy and the King's justice."

Lord Clarendon, (or those who *prepared* his papers for the press,) after a very unfavourable and uncandid representation of those sufferers, thus admits the distinguished respect which they attracted from the people.

"Prynne and Burton landed at the same time at Southampton; (November 28) where they were received and entertained, with extraordinary demonstrations of affection and esteem; attended by a marvellous concourse of company; and their charges not only borne with great magnificence, but liberal presents given to them. And this method and ceremony kept them company all their journey, great herds of people meeting them at their entrance into all towns, and waiting upon them out, with wonderful acclamations of joy. When they came near to London, multitudes of people, of several conditions, some on horseback, others on foot, met them some miles from the town; very many having been a day's journey, and they were brought, about two of the clock in the afternoon, in at Charing Cross, and carried into the city by above ten thousand persons, with boughs and flowers in their hands; the common people strewing flowers and herbs in the way as they passed, making great noise, and expressions of joy for their deliverance and return;

*Mr. Neville.* This person is a fit person for conduct,* and the Spaniards may take him prisoner, and make good use of him. I would have a good strong frigate.

*Mr. Reynolds.* This gentleman was brought from Scotland hither, and sent to Jersey in a frigate. It is a good prison.

*Mr. Harrison.* Burton and Prynne were wronged persons. It appears not but that this gentleman is criminal.

*Sir Arthur Haslerigge.* I am sorry to see this business stick. I hear it said there are others in his case.

He wagged his head; Lord Fairfax sat next him, and I suppose it was meant of the Duke of Buckingham.†

and in those acclamations, mingling loud and virulent exclamations against the Bishops, who had so cruelly prosecuted such godly men." *History*, (1705) i. 201, 202.

It has been objected to the historian's florid style, in describing "this insurrection," as he calls it, that "there could be but very few flowers in the latter end of November." *Biog. Brit.* (1784), iii. 45.

* Referring to his military skill.

† The following passages from *Whitlock* will explain this speaker's reference:—

"1657. Sept. 24. The Lord Fairfax his daughter and heir, was married to the Duke of Buckingham," of whose forfeited estate Lord Fairfax is said to have procured the restitution.

"1658. Aug. 29. The Duke of Buckingham was apprehended, and committed to the Tower." *Memorials*, (1732,) pp. 665, 674.

It was probably under the influence of his son-in-law, as well as of Lady Fairfax, that the brave General of the Commonwealth lent his aid to the treachery of Monk, and the justly-requited intrigues of the Presbyterian Royalists, which produced the unconditional Restoration. It is said, that he even condescended to provide his own charger for the use of Charles Stuart, on his public entry.

This second Duke of the Villiers' family, the *Zimri* of Dryden, in revenge for the *Rehearsal*, and whose life and death Pope has immortalized, is perhaps little known as the correspondent of William Penn, who, in a letter to a friend in 1690, three years after the Duke's decease, thus accounts for such an improbable intercourse:—

"Poor gentleman! I know not what the circumstances of that time might draw from me, but my only business with him ever was, to make his superior quality and sense useful to this poor kingdom, that he might not die under the guilt of mispending the greatest talents that were among the nobility of any country." *Belfast Magazine*, (1812,) viii. 82.

*Colonel Cromwell* took exceptions that Sir Arthur Haslerigge should so often take notice that so many young men were in this House. It was a great honour to them that they were sent by their country here.

*Sir Arthur Haslerigge* said, he did not name young gentlemen.

*Colonel Cromwell* said, he did say so; and so was the sense of the House.

*Mr. Bodurda* moved, that the Commissioners of the Admiralty and Navy accommodate the Governor, or whoever has custody of Mr. Robert Overton, with a frigate for the better and securer bringing of him.

*Mr. Steward* seconded it, and it was resolved accordingly.

*Mr. Scot.* I move that Colonel Gibbons, being Governor of Jersey, and here present, take notice of it.

*Colonel Gibbons* answered, he was in his Captain's custody, but agreed that *respondet superior*, he must answer for all at his peril.*

* "Upon some petition or information of Colonel Overton's restraint in the Isle of Jersey, it was ordered that the Committee of the Admiralty and Navy shall be required to provide a good frigate forthwith to be made ready, to bring over the said Colonel Overton to the Parliament. Which sending in favour and honour of Colonel Overton, it was observed by the Court, and qualified thus: That the Committee, &c. shall be required forthwith to provide a good frigate, with accommodations convenient for to bring over the Governor of the Isle of Jersey, or his Deputy, with Colonel Overton, his prisoner, which was ordered accordingly." *Goddard MS.* p. 117.

"The state of Major-General Overton's sad and deplorable condition," says Mr. Bethel, "was given at the door, and at the same time the House was petitioned by his sister, for a hearing of him by the Parliament themselves, which was readily granted, two votes passing the same day, in order to it.

"First, that his keeper should, with all speed, bring him, with the cause of his imprisonment, before the Parliament. Secondly, that a frigate should forthwith be sent to fetch him from the Isle of Jersey, where he was then prisoner.

"The Court at Whitehall was troubled at these votes, but the army having a tenderness for their fellow-soldier, they durst not oppose it; the votes meeting in the House with but two negatives to each." *Brief Narrative*, pp. 335, 336.

*Mr. Knightley* stood up to make a report from the Committee of Privileges, which, per the orders of the House, ought to precede.

*Mr. Robert Reynolds* moved to Mr. Neville's business.

*Mr. Knightley* went on and said, Mr. Serjeant Waller was in the chair, but being this day to take his order of Serjeant, could not attend.

The report was touching a double return for Rising, in Norfolk, wherein Mr. Fielder was returned by the Mayor.

*Mr. Bodurda.* From the bar all reports ought to be made. I would not have young gentlemen misled, which I hear often said.

*Sir Walter Earle* and *Sir Arthur Haslerigge.* One may report where he please. He must go down to the bar and make his three legs;* but if he can get so near the chair, that without handing it by another, he may deliver it to the chair.

*Sir Arthur Haslerigge.* It matters not whether the Mayor or Burgesses return, the Sheriff must answer for all. It is no good return, merely because it has the Mayor's seal. I would have satisfaction for the reporter, about the right.

*Captain Toll.* The borough of Rising is not within Norfolk, but a borough by prescription. I was present at the election. The return by the burgesses had twenty-five, the other but nine. So I am against the report.

*Mr. Steward.* This gentleman speaks to the merits. You are now upon the return.

*Mr. Starkey.* The Burgesses' return is the better return.

*Sir Walter Earle.* Admit the member to sit, *de bene esse*, and examine the merit afterwards.

*Mr. Turner.* A double return is where the proper officer makes a double return. This is a borough by prescription; then no head. Admit they have submitted to an incorporation, yet to have a mayor or bailiff, this does not out the right. Lord Coke says so. As to the election of Burgesses, I would have it re-committed.

* See *supra*, p. 22, *note* *.

*Mr. Hobart.* The precept was directed to the Mayor, and so it appeared to the Committee.

*Mr. Bodurda* and *Mr. Trevor.* Let not this have harder measure than the rest in such case.

*Mr. Scawen.* It is not parliamentary for the Clerk to read the report. Your chairman should, by word of mouth, report, and then only read the resolutions of the Committee.

Resolved, that John Fielder and Guibon Goddard are duly returned.

Resolved, that the indenture by which Robert Jermy and Guibon Goddard are returned, be withdrawn.*

The transcript of the record between Neville and Strowde was read.†

August 20, 1656. Action in the case laid. Recites the Instrument of Government, and the Indenture for return of the other parties. Trumbull ‡ returned, first of the five

* "Mr. Fielder, being returned, with myself, Burgess for Rising, by one Indenture between the Mayor and Sheriff, to which the seal of office was affixed, and myself and Colonel Jermy by one other Indenture, between the Parson and several other free Burgesses, and the Sheriff, (which indeed was rather a certificate than a return,) and Mr. Fielder's Indenture with myself returned by the Mayor, who was the head and principal officer, that return was adjudged good, and that the other Indenture shall be taken from the file, it being reported from the Committee, and ordered by the House. Whereupon, Mr. Fielder was presently sworn, and admitted into the House, and Colonel Jermy put to petition to the Committee of Privileges." *Goddard MS.* p. 117.

† See it *verbatim* in the *Journals.*

‡ Afterwards Sir William Trumbull, forgotten as a statesman, but remembered, such is the immortality which poets can bestow, as the earliest patron of Pope; who says, that their "friendship commenced at very unequal years. He was under sixteen, but Sir William above sixty."

To Sir William Trumbull, Pope dedicated the first of those juvenile productions, the Pastorals, with great local propriety, as "Sir William was born in Windsor Forest," (at Easthamstead Park, now inherited by the Marquis of Downshire,) "to which he retreated, (in 1697) after he had resigned the post of Secretary of State to King William III., and where he died in 1716." His resignation is thus celebrated, while the grateful protegé fondly assumes that his patron, would he but "tune

knights of Berkshire. Damages 2000*l.* Damages assessed, besides costs, 500*l.* Costs 20*s.** Arrest of Judgment moved, June 26, 1658. Ordered by Rule, that it be transcribed and sent to the House. Hide and Seys.†

*Mr. Neville.* I should be exceedingly sorry to trouble you with any business of my own; but the wrong is to you,

the lyre," as if fearless of "grand-climacterical absurdities," might even rival the nightingale.

> "You, that too wise for pride, too good for pow'r,
> Enjoy the glory to be great no more,
> And carrying with you all the world can boast,
> To all the world illustriously are lost!
> O let my Muse her slender reed inspire,
> Till in your native shades you tune the lyre:
> So when the nightingale to rest removes,
> The thrush may chaunt to the forsaken groves;
> But, charm'd to silence, listens while she sings,
> And all th' aëreal audience clap their wings."

Such, in every age, have been the common-places of adulation with dedicators, in prose or verse, who frequently apologise for the intrusion on a patron's modest self-appreciation, before they proceed to inform him that he is every thing great and good. A remarkable instance of excessive praise, was furnished by an early Latin translator of Paradise Lost, Regained, and Sampson Agonistes; whom Bishop Douglas drew from obscurity, to expose the literary frauds of Lauder. William Hog, an indigent scholar, had found a munificent "friend to his distress," in Doctor Cox, whom he justly addresses in a dedication, as "Mæcenas mi dignissime;" acquainting him, probably to the surprize of the learned physician, that he might be either a Virgil or a Homer, whenever he pleased: "Æneidos majestatem et Iliados elegantiam æquare possis." See "Paraphrasis Poetica in tria Johannis Miltoni viri clarissimi Poemata: Autore Gulielmo Hogæo." (1690) p. xi.

* "The jurors assess the damages of the said Henry Neville, besides his costs and charges, by him, about his suit in this behalf, extended to one thousand and five hundred pounds,—and for those costs and charges to twenty shillings." *Journals.*

† "Hilary Term, 1658. Neville, Esquire, against Strowde, Esquire. January 26th. Upon hearing of counsel on both sides, it is ordered, that a transcript of the record in the cause between the said parties, and hereunto annexed, be delivered unto the honourable House of Commons, in Parliament assembled, for their resolution therein; this Court doubting whether they have cognizance of this cause, being grounded merely

and comes doubly before you, both as it is your privilege, and as recommended to you from the Judges.

I had recourse to the 23d *Hen.* VI., and brought an action; but withdrew it, because another kind of Parliament was provided for by that statute. I had good counsel to bring my action at Common Law. You are the true father, the child is brought to your door. The reverend* Judges find it a case of new impression. If you please, make an end of it now. If you turn from it, it will come before you again by writ of error.

I move for a day to be appointed for hearing counsel on both sides.

*Mr. Starkey.* I doubt not but you will be as tender of all men, as you will be of your members. The Sheriff is my countryman. Here is both matter-of-fact and law. I would have a day appointed to hear counsel on both sides.

*Mr. Turner.* A case of that weight is of first impression to you, as well as to the Judges.

There are two points.

1. Whether an action of this nature lies at Common-Law.

A declaration in the preamble of the statute, no remedy at Common Law; therefore the statute appoints a penalty.

The 2d doubt. The thing in its own nature concerns you. The matter-of-fact is clear, but the judgment is with you. I would have the debate adjourned till Saturday morning, that we may look into our books.

upon the Common Law, of which they find no precedent; and wherein the privilege of that House, in determining the due election of their members is concerned.

"By the Court.

"Mr. Serjeant Hide, for the Plaintiff.

"Mr. Serjeant Seys for the Defendant." *Journals.*

* This term is now, I believe, confined to the other robe; the long robe, through all its gradations, being only *learned.* It appears to have been otherwise in the age of this Diary. I have now before me, printed in 1651: "A Perfect Abridgment of the Eleaven Bookes of Reports of the Reverend and Learned Knight, Sir Edw. Cook, sometime Chiefe Justice of the Upper Bench."

*Mr. Reynolds.* I move for this day se'nnight. None will go so hastily to a judgment.

*Mr. Bernard.* I move for a day after term, that counsel may attend.

*Mr. Neville.* If this curb, by the verdict, had not come in, it is likely you had not been here in such a free Parliament.*

*Mr. Knightley.* I move for Tuesday next.

*Sir William Wheeler.* A *scire facias* ought to go out to the defendant; but I would have you first resolve whether you will take the judgment upon you yourselves.

*Mr. Pedley.* This is not a privilege that now concerns you, other than for public example. This is now between party and party. I would have it postponed for a month, and the Judges to inform you of the whole matter.

*Sir Arthur Haslerigge.* This is no private business. The Judges think it to be a business that concerns your privileges. I would have it put this day se'nnight.

*Mr. Bodurda.* This is indeed a public business. I would have no counsel at the bar, which is only admitted in private business. In the case of ship-money it was said counsel was appointed,† but the Parliament was dissolved first,‡ ere it could be heard. I would rather hear the Judges.

* "Mr. Neville's case, between him and Strowde. Mr. Neville himself did move it, but modestly enough, and then withdrew." *Goddard MS.* p. 118.

† See vol. i. p. 407. *Rushworth* mentions, "April 30, 1640, the Commons being turned into a Grand Committee concerning Ship-money, and the records where the judges' opinions were entered, being sent for." *Hist. Col.* (1706), iii. 152.

"A Resolution of the Commons" followed "that the King's counsel may be heard there, as soon as they are ready, concerning the lawfulness of it, with other matters relating to that enquiry." *Parl. Hist.* viii. 458.

‡ "May 5," says *Rushworth*, "Secretary Windebank went early to Mr. Speaker's House, with a command to bring him to Whitehall. The Commons met, and the Speaker not coming, they concluded they should be dissolved. About eleven, the Usher of the Black Rod came for them, and the King, applying himself wholly to the Lords," at the conclusion of his speech, "bid the Lord Keeper do as he had commanded him; and

*Lord Lambert.* This is both public and private business. I would have counsel heard on both sides, at a short day. There is a great prejudice from double returns, which Sheriffs make for fear of actions. They know not what to do in some places, and in others, there are petty designings.

*Sir Walter Earle.* I would have counsel to be heard in the business, but not to the jurisdiction of this Court.

*Mr. Steward.* This is a special action. This case never happened before, and can never happen again. The consequence cannot be to your prejudice; which way soever it go. I would have counsel heard on both sides.

Resolved, to hear counsel in this case, on both sides, this day sennight.

*Sir Arthur Haslerigge.* I made you a short motion yesterday, and was put out. I find somewhat in a book I bought, entitled his Highness's speech.* There is in it matter of great concernment and inconveniences, lest the mis-

the Lord Keeper told the Lords and Commons, that his Majesty dissolved the Parliament." *Hist. Col.* iii. 156.

Dr. Heylin, in an anonymous publication, acknowledged among his works, thus remarks on this hasty dissolution, the time and manner of which were so well calculated to sharpen the spirits of the popular party, and to bring a powerful democratic influence into the Long Parliament.

"Most sure I am, that it was secretly muttered about the Court, the night before, that Hamilton had prevailed with the King to dissolve the Parliament; who, playing as he used to do, with both hands at once, did, with the one, pull back the Commons, by his party there, from all compliance with the King, and, with the other, thrust the King forward to dissolve that meeting: that, by this means, the King's affairs being more embroyled than they were before, he might confirm the Scots and confound the English, and thereby raise himself to the point he aimed at.

"A sad and unfortunate day it was, and the news so unpleasing unto the author of these papers, whosoever he be, that being brought him by a friend whilst he was writing some despatches, it so astonished him, though he had heard some inkling of it the night before, that suddenly the pen fell out of his hand, and long it was before he could re-collect his spirits to return an answer." See "Observations on the History of the Reign of King Charles," (1656,) pp. 175, 176.

* See *supra*, pp. 7, 11.

chief, after warning, be said to be yours, if you have notice given, and do not prevent it.

1. This Parliament was summoned upon such great, important affairs as the like was never; I believe it.

2. The reason why. We have so many enemies within and without, and if your care and wisdom be not very great, evil may come. And that lies upon you, to improve your wisdom, to secure yourselves against such, expressed to be implacable enemies. The means are left to yourselves.

3. You have the best army in the world. If they were not so, you would have heard of great inconveniences by reason of great arrears. I believe the best army that ever was in the world. I bless God for it. I hope it will manifest itself so to the world. We raised them here. I moved it. We voted all the Colonels and Commanders in Chief. This noble Lord that sits by me, Lord Fairfax; I bless God that he, having received so many wounds, now sits on my right hand. If we should not take care of the best army in the world we were to blame. I shall speak for them, now I have liberty. I am sorry they are come to necessity. When your Speaker was taken out of the chair,* there were

* "On the memorable April 20, 1653. This plain allusion to the military outrage then committed by the late Protector, and which his quondam associates had never forgotten, nor could be expected to forgive, must have been very unacceptable to the present courtiers of Whitehall. Yet, see (vol. ii. p. 303) as an instance of freedom of speech used even in Oliver's Parliament, the proposal of honouring his Highness with "a rope," though a pretended *lapsus linguæ*.

James Heath, author of "A Brief Chronicle," containing, says Wood, "innumerable errors," as "being mostly composed from lying pamphlets," was, also, the virulent author of *Flagellum*, now before me, (*edit.* 1662.) There I find him indulging, by the aid of the engraver, a pitiful rancour towards departed greatness, and no doubt he gratified "his sacred majesty," just restored "to his kingdoms," by prefixing a frontispiece, quite in the royal taste, in which "Oliver Cromwell, the late Usurper," is suspended by a rope.

This writer, however, did not incur, like too many of his contemporaries, the disgrace of reviling the memory of the Protector, after having appeared, during the short period of his supreme power, among his most servile adulators. He "adhered to King Charles II. in his exile, till

100,000*l.* in coin in Ireland, and as much in London, ready coined. The matter of arrears is left to your care. I am glad it is so. It rejoices my heart that we are not likely to leave posterity in a worse condition than we found them before.

I shall speak to the war with Spain afterwards.

It is said it concerns you to be in a posture of defence. You never had such a fleet as in the Long Parliament. All the powers in the world made addresses to him that sat in your chair. Lord Fiennes declares that you shall have an account of all your affairs.* I would have a Committee appointed to inquire into this, concerning army, navy, money, and all things. I refused to pay taxes not laid by Parliament. My oxen of value sold for twenty and forty shillings a-piece. I would have all the names of your officers, with an account of that money. There should be two Committees, but not too numerous.†

his patrimony was almost spent," and then "he was forced to write books, and correct the press, for bread to maintain his children." James Heath survived, and celebrated in 1662, "The Glories and Magnificent Triumphs of the Blessed Restitution;" and such was his talent for amplification, that, on a theme so scanty, he produced "a large octavo." *Athen. Oxon.* (1692) ii. 226.

* "You will receive a particular account, from those under whose survey and care those things are, of the state of the public revenue, and of the forces both by sea and land; your inward and outward walls, under God, and as good as any in the world. But as all things that are good are also costly, so can it not be expected but that the charge of them should be great." *Parl. Hist.* xxi. 279.

† "Sir Arthur Haslerigge told us, that it did appear upon his Highness's speech, that we had the best army in the world, for not bringing in upon us those inconveniences, which an army in want is used to do. He conceived them to be the best army in the world, because they were raised by the Long Parliament and by himself, that he had spent much blood with them in the public service, and that the noble Lord, meaning the Lord Fairfax, that sat by him, had lost much more, and had, indeed, many wounds, and spent many pounds of blood with this army. Therefore, it must needs be good, very good; but he was very sorry they were in want. It was not so in the time of the Commonwealth. They had always one month, if not three months' pay beforehand. (See *infra*,

*Colonel Birch.* The honourable person, my honoured friend, has well moved you for a Committee. I wish the former part of his speech had been left out, as to the Long Parliament. Give me now leave to account to you how I left it. I was one of those who was put out.* There were then 100,000 men in arms, carried on with a small charge. We left 600,000*l.*, and half as much out of compositions, Weavers'-hall money, Dean and Chapter lands,† and 120,000*l.* per month laid.

If that glorious time had continued seven years longer; if it had given the people that ease that was expected, it had yet stood.

The Protector says his interest shall be ours, to give peace both at home and abroad. That speech, if well looked upon, will satisfy all.

I would have a Committee to those ends.‡

p. 64.) It was high time to have an account of this. Soldiers must not be in want. Necessity will make them break through stone walls.

"In the next place, the speech told us that we had considerable enemies abroad, and therefore it was high time that our forces be looked into, both by sea and land. Never such an army, and such a fleet, as under the Commonwealth, we were then in a flourishing condition, feared abroad and loved at home.

"And, therefore, since it was declared by Commissioner Fiennes that we should have an account of our affairs, he moved for a Committee to consider how the condition of our affairs stands, especially with reference to our army and navy, and to consider likewise how our money and our treasure stands." *Goddard MS.* p. 118, 119.

* One of the secluded members. *Parl. Hist.* ix. pp. 13, 29. See vol. ii. p. 387 *note* *.

† See vol. ii. p. 233 *note* †

‡ "Colonel Birch. The account of the proceedings of the famous Parliament might have been spared. But since it has been spoken to (by Sir A. H.) I am engaged to let you know how it was when I left it, as well as when he left it. There were 100,000 men, at that time in the army, and yet they were maintained with small tax, and it would have been accounted a most miserable burden to have laid a tax of 50,000*l.* *per mensem.* Yet we left 300,000*l.* in money (Weavers' Hall accounts) Deans' and Chapters' lands, and other delinquents' estates. And, if that glorious time had lasted but a little longer, we must have sold two thirds of our estates to have kept the third.

*Mr. Starkey.* I fear none of that money those gentlemen speak of, that they left, will now be found. To appoint a Committee, is very proper, but a work of time. They stand in need of some money. His Highness would not have told you of the arrears, had he had it in his treasury to pay them. We cannot redress past grievances. Other powers are to be consulted in raising of money as we are now constituted.* First settle your foundations. Rest not upon an expectation of a return from your Committee, to supply you. †

*Mr. Bodurda.* First understand your consistency and construction. I would have you order the Commissioners of your Treasury, to bring in what remains on the foot of the account, since the last Parliament. The Petition and Advice requires it. I suppose they are preparing it. I should fear the Committee of the Army presenting their arrears.‡

*Mr. Secretary.* I am glad to see this House entertain themselves with this consideration. I shall not look back at what is passed. If that were examined, I doubt you will find no such treasury, but rather great debts. Yet compare what sums were raised, and it is no more than might be expected.

I understand not the grounds of that commission, viz. the nomination of all the officers. We are now under another constitution.

The matter of your money, you may have an account of, which I suppose is all that is meant by this Committee. Se-

"For the Protector's speech, which was delivered freely, and with his own inclination, it hath given great satisfaction to all, but I am for a Committee," &c. *Goddard MS.* p. 119.

* See vol. ii. p. 457, *note* ‡.

† "Starkey. Hath heard what treasure these two former gentlemen left, when they left their share in the government: but fears little is to be found there now. It will be a waste of time to consider how it hath been spent.

"It is first fit to advise of the Constitution and foundation under which we now are, before we can consider of these things which are now propounded. Therefore, he moved it may be totally laid aside." *Goddard MS.* p. 119.

‡ "Mr. Bodurda. We ought to meet in some consideration of the government, before we can consider of money." *Ibid.*

veral officers can acquaint you with the state of affairs. Instead of a Committee, I would have you appoint the several officers to bring you in these accounts.*

*Serjeant Maynard.* It is necessary in time to have an account by a Committee, but a work of time that will be. I would rather have the state of things from the officers, which is more proper and natural. Never could you get an account in Parliament, from whom received, and to whom paid.†

*Mr. Knightley.* I have never been a soldier, yet always was forward that they should have their due encouragement. That noble Baronet brought a good estate hither. The Secretary and Serjeant Maynard have well moved you. Committees are tedious. I would first have the officers bring in their several accounts.‡

*Sir Arthur Haslerigge.* I would have the wheels oiled,

* "Mr. Secretary seemed very glad the House was pleased to entertain themselves with this business. The necessities of the nation must be provided for, and supplied. Accordingly, to look forward will be more necessary for the peace of the people, than to tell what hath been done either in 48 or 53. He said, he was a perfect stranger to the great treasure that was left.

"He understands not the grounds of the Committee for nominating officers. We are now under another Constitution.

"But monies may be seasonable, and we may have an account of them, from the Commissioners of Admiralty and Army, who will be ready to observe all orders this House shall give them; and therefore he moved those officers might be made to bring account of all things within their charge." *Goddard MS.* p. 120.

† "Serjeant Maynard. A Committee for looking into the state of the army is necessary to put us into a way and condition to supply it. But better first to send for the respective officers to give you an account how things do stand, and then to appoint a Committee." *Ibid.*

‡ "Mr. Knightley. I agree with Serjeant Maynard, and that he hath put us into a better order; that the Commissioners of the Navy and Army, give us a true state of both, so that a supply may be cheerfully given. I never grudge a soldier his gains. If they be our army, they shall have the last drop of my blood; but if otherwise, we must consider. Sir, we must know that no Act of Parliament can bind the hands of another. It is necessary also we should know our officers. They were raised by us, and must we not know them." *Ibid.* pp. 120, 121.

that we may go on cheerfully. I would have us plain-hearted. I would have the names of the officers. If they be our army, they shall have the last drop of my blood. The militia is our militia. Shall not we ask to see their names again?

We may vote such powers as to put us to fight all our cause over again. This must be spoken to, fully. Laying foundations, we shall unsettle as well as settle, and bring blood instead of power.

*Mr. Trevor.* The peace of this nation is more concerned in looking forward than backward. The question is narrow, whether you will have an account of your monies? I hope it is not intended you should alter your constitution.

*Mr. Scot.* If you call not arrears looking backward, I know not what is looking backward.*

He that reckons without his host, or pays without a reckoning, is either very rich or very weak. See your charge first, and then you can the better estimate what to provide.

I am sorry we have any war. I would have your army encouraged. I would have a Committee, as moved.

*Sir William Wheeler.* A true saying, the people is the purse of the nation. Accounts are always given by the Commissioners, but Committees are tedious. I would have the officers give you an account of all. I move, that they deliver in their accounts on Monday sennight, and swear they keep their books in a good method.†

*Mr. Scawen.* I would have an account of your strength, of your charge, and of your treasure.

Resolved, that the Commissioners of the Treasury be required to deliver into this House, on or before Monday sennight next, an account of the state of the treasury within and under their survey and jurisdiction.

* "Mr. Scot. Something must be previous to this account. It will be necessary to look after the arrears; and, if they will forgive us, then we will pardon them." *Ibid.*, p. 121.

† "Sir William Wheeler. The Commons are the power of the nation. The Lords Commissioners in King James's time, brought in the accounts and delivered them to you." *Ibid.*

*Colonel Parsons.* I move for a list of your officers, to know your strength.

*Mr. Neville.* This question is not large enough to hold your debate. It is moved that you may know your strength. I would have a Committee to examine the whole business.

*Mr. Knightley.* If my bailiff should bring me an account of 2000*l.* spent this year, and say not to whom, I should take it as a lame account.

*Mr. Weaver.* It was told you by the Protector, that is now in heaven, that you should have an account last Parliament, and he died before you could have it.

*Mr. Manley* moved to change the word "require" for "desire."

*Mr. Hungerford.* They are your servants, and require is most proper.

*Mr. Reynolds.* You must have another question. You must have a statement of your charge, as well as discharge. I move that, the same day, there be brought in a statement of the establishments of your Army and Navy.

*Mr. Scawen.* There are General-officers, Admirals, &c. Are not they fittest to give you an account?

*Lord Lambert.* It is fittest to receive an account of the state of your army and navy from the officers. Of the army you may have a certain account, but of your navy, only an estimate.

*Mr. Raleigh.* I would have it compared, your present establishment with what was your establishment.

*Dr. Clarges.* The Commissioners of the Treasury can give you an account of the estimate.

*Mr. Secretary.* Your first question comprehends the latter. There can be no account of the establishment of your Navy, only an estimate. Yet, seeing you are inclined to it, let your question go on, that the officers do give you an account. Every account comprehends a discharge and a charge.

Resolved, that the Committee of the Army be required to deliver into this House, on or before Monday sennight

next, the establishment of the Army of the three nations, as it stands now before them.

*Mr. Reynolds.* Your charge must be according to your danger.

*Colonel Birch.* It is not fit to bring your strength to such open examination. It is not fit to be discovered.

*Mr. Hoskins.* It is not proper to discover your strength, or your designs.

*Mr. Jessop.* The Lords of the Council* are not altogether capable to give an account of the charge of the Navy. They can give you a list. The Commissioners of the Admiralty and Navy can give an account of present and past charges and future estimates.

*Serjeant Seys.* I would not have our preparation laid open. Sever the questions; for with past or present, you may have an account.

*Colonel Clark* moved to leave out the last clause, as to the future estimate.

Resolved, that the Commissioners of the Admiralty and Navy, be required to deliver in to this House, on or before Monday sennight next, an account of the present charge, and of the debt now owing to the Navy.†

* This speaker was Clerk of the Council.

† On the flippant assertion of "a young gentleman," one of the court party in the late parliament, (vol. ii. p. 396), I adduced some authorities to show how the Long Parliament had provided for the public service, and administered the nation's pecuniary resources. It will not be unseasonable, especially with reference to some passages (*supra*, pp. 57, 58,) which preceded the above resolution, here to add, from a contemporary, Mr. Slingsby Bethel, a testimony to their meritorious exertions, written during the reign of Charles II., though, probably, first published just after the Revolution :—

"When this late tyrant, or Protector, as some call him, turned out the Long Parliament, the kingdom was arrived at the highest pitch of trade, wealth, and honour, that it in any age ever yet knew. The trade appeared, by the great sums offered then for the customs and excise; 900,000*l.* a year being refused. The riches of the nation showed itself, in the high value that land, and all our native commodities bore, which are the certain marks of opulency. Our honour was made known to all the world by a conquering navy, which had brought the Hollanders

*Mr. Bodurda* and *Mr. Starkey*, moved that, for the Speak-

upon their knees, to beg peace of us upon our own conditions, keeping all other nations in awe. And besides these advantages, the public stock was 500,000*l.* in ready money, the value of 700,000*l.* in stores, and the whole army in advance; some four, and none under two months. So that, though there might be a debt of near 500,000*l.* upon the kingdom, he met with above twice the value in lieu of it." See "The World's Mistake in Oliver Cromwell," (1689,) p. 32.

Such are the representations of a near and intelligent observer, no republican, nor "injured, or disobliged by Oliver;" of whom he says, "I can with truth affirm, I never received either good or evil from him in all my life, more than in common with the whole kingdom." *Ibid.* p. 53.

Roger Coke, another contemporary and an anti-republican, after paying a forced homage to "the haughty and victorious Rump, whose mighty actions will scarcely find belief in future generations," thus proceeds—

"To say the truth, they were a race of men, most indefatigably industrious in business, always seeking for men fit for it, and never preferring any for favour, nor by importunity. No murmur or complaint of seamen or soldiers employed by them, either by sea or land, for want of pay. In all the ports of England, during the Dutch war, money or credit was found to pay off the seamen, whenever their ships were designed to be laid up." *Detection* (1697), p. 363.

Thus it appears, that the claim of desert which *Ludlow* advances for the Long Parliament, when just about to be interrupted by the military intrusion of Cromwell, may be fully justified.

"This Parliament maintained a war against the Dutch, with that conduct and success that it seemed now drawing to a happy conclusion; recovered our reputation at sea, secured our trade, and provided a powerful fleet for the service of the nation. And however the malice of their enemies may endeavour to deprive them of the glory which they justly merited, yet it will appear to unprejudiced posterity, that they were a disinterested and impartial Parliament, who, though they had the sovereign power of the three nations in their hands for the space of ten or twelve years, did not, in all that time, give away amongst themselves so much as their forces spent in three months: no, not so much as they spent in one, from the time that the Parliament consisted but of one House, and the government was formed into a Commonwealth." *Memoirs*, ii. 453.

The condition to which the army was gradually reduced during the Protectorate, notwithstanding parliamentary supplies and arbitrary exactions, especially from the rapacity of the Major-Generals, is sufficiently described by the late Protector. He, at length, as he appeals to eye

er's health and ease, the House be adjourned till Saturday, and that the fast be kept without the mace.*

The sense of the House was contrary, and some moved that it was never so.

The House rose at one o'clock.

The Committee of Privileges sat in the Star Chamber, Mr. Starkey in the chair. Adjourned to the House. All the day, till candle light, taken up in the business of Colchester election, between Major Stone and Barrington, chosen by the Mayor and Aldermen, &c., and Shaw and Johnson, chosen by the burgesses.

The question was, whether to go to judgment only upon the return, or upon the merits of the election? It was resolved, twenty-eight to twenty-seven, that the merits should be debated, contrary to two resolutions of the Committee, the day before, in the case of Reading and Castle-Rising: Sir Arthur Haslerigge zealous in those, and slack in this. "Kissing goes by favour."

*Mr. Redding*, in his speech to the Committee, called the Lord Protector Richard the Fourth.

*Mr. Starkey* would not declare whether the *Yeas*, or *Noes* had it, and was laughed at sufficiently for a quarter of an hour. He said he was not satisfied that the *Yeas* had it, and yet at last declared that he thought the *Yeas* had, contrary to his judgment. It was moved that a Clerk might read the petitions and papers; but denied: and the Chairman appointed to read them; else to leave the chair. The Chairman cannot leave it without leave.

The Committee adjourned till Saturday next, and then the business of Oxford to be taken up.†

and ear witnesses, depended for the support of his government, on "a poor, unpaid army, the soldiers going bare-foot." See vol. ii. p. 366.

* To dispense with the Speaker's attendance.

† There were "repeated attempts at the end of Elizabeth's and the beginning of James the First's reign, to draw the power of deciding controverted elections to the Court of Chancery." They, however, continued to be decided by the House, on a report from "the Committee of Privileges," till the Grenville Act, establishing the present mode of forming election Committees, was passed in 1770. *Parliamentary Guide* (1784), pp. xiii, xvii—xxx.

*Friday, February* 4, 1658-9.

The House kept a fast within their own walls.

Dr. Owen preached. His text was *Isaiah* iv. 5. "For upon all the glory shall be a defence."*

Dr. Reynolds† preached. His text was 2 *Phil.* i. 2.

* This sermon was entitled, "The Glory and Interest of Nations Professing the Gospel." See vol. ii. p. 97, *notes.*

† This eminent Presbyterian, who at length, "mitre and crosier dancing in his eyes," overcame his scruples against diocesan episcopacy, is thus described by Sir Thomas Browne: "My honoured friend, Bishop Edward Reynolds, was a person much of the temper of his predecessor, Dr. Joseph Hall, of singular affability, meekness, and humility; of great learning, a frequent preacher, and constant resident." *Repertorium,* (1723,) p. 20.

*Wood* admits Dr. Reynolds to have been "a person of excellent parts and endowments, of a very good wit, fancy, and judgment, a great divine, and much esteemed by all parties for his preaching and florid style," though "of an hoarse voice." Yet, with his usually "great plainness of speech," the Oxford biographer thus exposes the versatility of this timely conformist.

"In 1642, he sided with the Presbyterian party, and became one of the Assembly of Divines, a Covenanter, and a preacher before the Long Parliament. In 1646, he was appointed one of the six ministers to settle in Oxford, to preach the scholars into obedience to the said Parliament; afterwards, one of the visitors to break open, turn out, and take possession, as Dean of Christ Church, in the place of Dr. Samuel Fell, ejected, and Vice-Chancellor of the University. Being forced to leave his Deanery, in 1650, because he refused to take the independent engagement, [see vol. ii. p. 279, *note* *,] he retired to his former cure of Braynton in Northamptonshire. Afterwards, he lived mostly in London; preached there, and flattered Oliver and his gang; and after his death he did the like to Richard, and was the orator or mouth of the London ministers, to welcome that mushroom Prince to his throne, 11th October, 1658. Also, when hopes depended on Monk's proceedings from Scotland, he struck in with him, and who more ready than Dr. Reynolds and other Presbyterians,—[see vol. ii. p. 320, 373, *notes* *,] when he and they saw how things would terminate, and could not be otherwise holpen,—to bring in the King after his long exile, by using his interest in the city of London, where he was the pride and glory of the Presbyterian party.

"Soon after the Restauration, upon the feeling of his pulse, the King

Mr. Calamy* preached. His text was *Psalm* xciii. iv. "The Lord reigneth."

Dr. Manton† preached. The text was *Deut.* xxxiii. 4, 5.

The exercises held from nine till six.‡

*Mr. Reynolds* and *Mr. Knightley* moved that the ministers have thanks, and print their sermons.

*Sir Arthur Haslerigge* and *Mr. Scot* moved against printing them.

Resolved in the affirmative.

*Lord Fairfax* spoke twice, inclining rather not to have the sermons printed.

He spoke but so so. Then arose a division about the question, so suddenly after the duty.

bestowed upon him the bishoprick of Norwich; which see he willingly taking without a *nolo*, was, after he had taken the covenant, and had often preached against Episcopacy and the ceremonies of the Church of England, consecrated thereunto, on the 6th of January, *anno* 1660-1. By virtue of which bishoprick he became an Abbot, (a strange preferment, methinks, for a Presbyterian,) of St. Bennet in the Holme, which he kept (with great regret to his *quondam* brethren, whom he then left to shift for themselves,) to his dying day," in 1676.

*Wood* adds, though I trust the imputation is unjust, "It was verily thought by his contemporaries, that he would have never been given to change, had it not been to please a covetous and politic consort, who put him upon those things he did." *Athen. Oxon.* (1692), ii. 420, 421.

The King is described by *Wood* as advancing Dr. Reynolds to the mitre "upon the feeling of his pulse." In another place, this indefatigable detailer of anecdotes has shown the "Supreme Head over all causes ecclesiastical," either jesting with his high prerogative, of awful responsibility, or applying it to political purposes, with equal facility.

"1677. Nov. 26. Divers would be asking the King who should be Archbishop; who, to put off and stop their mouths, he would tell them, Tom Baillies. He is a drunken lecherous justice of peace for Westminster.

"Dec. 29. *Congés d'elire* [see vol. ii. p. 465, *note* †,] went to Canterbury to elect Dr. Sandcroft Archbishop of Canterbury, set up by the Duke of York against London, [Dr. Compton,] and York put on by the papists. York doth not care for London, because he showed himself an enemy to the papists at the Council Board." See "The Life of Mr. Anthony a Wood," (1772,) p. 271.

* See vol. ii. pp. 320, 373, *notes*. † See *Ibid.* p. 89, 311, *notes*.

‡ See *Ibid.* p. 372.

Mr. Godfrey and Mr. Bampfield came into the House. I question if they were sworn.

*Mr. Disbrowe*, *Mr. Bulkeley*, *Mr. Hungerford*, and *Mr. Gewen*, moved to have the sermons printed.

There was a collection for the poor at the door by the Serjeant;* so the Speaker went out without the mace.

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*Saturday, February* 5, 1658-9.

The House sat, ere I came in.

*Sir Arthur Haslerigge* was moving that the petition of John Lilburne's† widow be read.

It was read, and referred to a Committee.‡

*Mr. Bodurda* and *Mr. Manley* moved that Major-General Ludlow sat, and had not taken the oath.§

* See *supra*, p. 13, *note*.

† See vol. i. p. 156, *note* ||; *infra*, February 28.

‡ "To examine the matter of fact, and to report to the House what they shall think fit, in their opinion, to be done thereupon." *Journals*.

§ See *supra*, p. 11, *note* †. The General thus fully explains his conduct, and details the result of this unfriendly interference:—

"Those that governed at Whitehall, had ordered an oath to be administered to all such as should be admitted to sit in the House, whereby the members were to oblige themselves not to act or contrive any thing against the Protector. This oath I was unwilling to take, and therefore declined going into the Assembly; but being one day walking in Westminster-hall, and meeting Sir Walter St. John, who was one of the persons appointed to administer the oath, he asked me why I came not to the House? I told him, that though I had heard divers arguments for taking the oath, yet my doubts not being fully satisfied by them, I had hitherto abstained. Whereupon he desired me to meet him in the lobby the next morning, promising to carry me in with him, "which," said he, "will create a belief in the House that I have given you the oath." Accordingly I attended, but not finding Sir Walter there, I went in, and the House being at prayers, I stood amongst the rest of the members till they were ended, and then went up to the Speaker's Chamber, where, and in the gallery, I sat with as much privacy as I could.

"Thus I continued to do for about a week, when news was brought,

*Mr. Collins* offered a petition against an unqualified member, and it was debated whether the other or this should be read first.

to the great mortification of the Court, that Sir Henry Vane was chosen to serve in this assembly for the borough of Whitchurch. Sir Henry being come to town, and informed that I sat in the House, he was pleased to make me a visit, and to enquire by what means I had procured admission, for he had been acquainted with my scruples touching the oath. I assured him, that my doubts remained still unsatisfied; but that I had ventured to go into the assembly, where I sat as yet without any interruption.

"Within a day or two, a member informed me of an intention in some to complain to the House against me, for sitting amongst them, without the qualification of the oath; to which I answered, 'that it was no more than I expected.' And accordingly one of the members called Bodurda, the same day pressed to be heard touching a matter which, he said, concerned the very being of the House; having been informed that there sat a person amongst them, who had not taken the oath required to be administered to every member before his admission. He therefore moved the House to enquire into it, and to give order that all men that sat there might be upon an equal foot. This motion was opposed by some, who alleged that it was of far less importance than many other things that were before them.

"Mr. John Trevor, a leading man of the court-party, seconded the former motion, though with much civility and respect, urging that he could not but think it very seasonable, and of consequence, considering the worth, as he was pleased to say, of the person concerned. So the debate was entered upon, and divers gave their opinions that the oath should be peremptorily required. But Mr. Weaver and some others opposed them, alleging that for the most part oaths proved only snares to honest men, it being generally observed, that those who were least conscientious in keeping an oath, were the most forward to take it. Colonel Eyre also informed the House, that he had sat in the Long Parliament without taking the oath then prescribed, and that he was fully persuaded that my omission therein proceeded not from a spirit of opposition, but from a real scruple of conscience; that his case had formerly been the same with mine; and though no man could question my affection to that Parliament, yet I had moved the House in his behalf, and was the person nominated by them to bring him into the House without taking the oath.

"This debate continuing for two or three hours, was at length interrupted by the discovery of a person sitting in the House, who had not been elected so to do: his name was King, and being called to the bar, the House demanded of him whether he were a member? To which he an-

*Mr. Salway* moved that the petition against the unqualified member be read first.

The petition was read. It was from the inhabitants of Worcester, that they had chosen Mr. Gyles,* but that Mr. Streete, a person who had been in arms, and a common swearer, was chosen by the profane rabble, and Cavaliers.

*Mr. Weaver.* I move that a Committee be appointed to examine this business; also the qualifications of all members,

swered, 'that he knew not whether he were or no, for meeting with an Alderman of London, who asked him if he were chosen, he demanded of him the reason of his question: whereupon the Alderman saying that he had seen the name of one King upon the list of returns, he came down to the House, and had continued so to do, that he might not be wanting in his duty.'

"This man being ordered to withdraw, many of the members willingly left the debate, and others did so too from their great zeal against him, supposing him to be a dangerous person, because he had been observed that morning in the Speaker's Chamber to approve and promote a paper which was there delivered, tending to show the wickedness of the designs that were carrying on by the court-faction, and the necessity incumbent on the assembly to restore the Commonwealth. So the merits of this person having been debated also, and the House being informed by one of the members serving for the City of London, that the man was distempered in his head to that degree, that his relations were often obliged to bind him hand and foot, they contented themselves to send him to Newgate for a day or two, and then ordered him to be discharged.

"By this means the assembly was diverted from resolving to impose the oath; and though they were much inclined to get rid of my company, yet partly by finding so great opposition, and partly by discovering that there were some of another interest which they liked better, that had not taken it, they were discouraged from resuming that debate for the future, though they did sometimes mention it by way of reflection, when I moved any thing displeasing to them." *Memoirs* ii. 619—623.

It is difficult not to doubt the consistency of this tacit acknowledgment of the Protectoral government, by the General and his republican associates thus sitting in the Protector's Parliament; though it is still less easy to call in question their pure and patriotic purpose. As members of the Long Parliament, which was not dissolved, but only interrupted by military violence, they appear to have considered themselves as possessing exclusively the right to an occupation of that House, during any proceedings conducted according to the forms of Parliament.

* Mr. Collins, who presented the petition, was the other member.

and that an order be placed at the door, that all persons that know themselves in their consciences unqualified, may forbear to sit, at their perils. This was done in the Long Parliament, and it was to good purpose. Many members left us.

*Mr. Starkey.* In regard this gentleman is a member, it is his privilege to be heard in his place. Before you refer it to a Committee let him be heard for himself. It is a condemnation, to speak before he is heard.

Divers members seconded this, but none seconded Mr. Weaver's motion.

The petition was read. It prayed that the Sheriff, on his oath, bring in a list of the electors.

Ordered, that Mr. Thomas Streete, one of the members of this House, named in the said petition, be required to attend the House; and to give his answer to the House, concerning the matters complained of in the said petition, on Tuesday morning next.

*Mr. Bodurda* renewed his motion,* and said that since he moved, he perceived two or three more members were come in.

*Sir Arthur Haslerigge.* Let not such a thing as this interrupt your moved business. The debate will cause heat. I desire not to question Scotland or Ireland, who have no colour at all to sit.†

The oath is interpreted to a clear contrary sense than as I took it. I hope such a dry bone as I am may do some help in this work. I thank God, I begin to love all those that I hated. I beseech you, put off this debate.

*Mr. Trenchard.* I move to put off this debate.

*Mr. Starkey.* *Ratio suadit, authoritas vincit.* I cannot

* See *supra*, p. 68.

† Richard's Council, according to *Ludlow*, on the advice of those "learned in the art and mystery of the law," having determined "that writs should go out in the ancient manner, to elect members to serve for England," it was contended that "there could be no pretence for those of Scotland and Ireland to sit with them. However, the majority concluded that members should be chosen for Scotland and Ireland, as had been practised in the time of Cromwell, with this proviso, that they should not be permitted to sit as such, till the consent of those chosen for England were first obtained." *Memoirs*, p. 616, 617.

think this to be so slight a matter as to be put off. The law is judge. The Petition and Advice: you will not let reason or argumentation be against that. If it had not been now moved, I could wish it had been left till Monday be over. Let the law be read, and you declare it. That is all that is now required.

*Mr. Knightley.* I would have this waved at present. Sins of commission are greater than of omission. Those touching your qualifications will, I suppose, be greater.

*Mr. Henley.* We come here upon the Petition and Advice; through which is the greatest bond of amity that can be. We must stand upon this foundation. Where shall the righteous stand, if the foundations be shaken? Four hundred have taken the oath. Why should two or three refuse it, or, at least, not forbear to sit till they have taken it? Nature and reason require not to question the authority that called us. If any members sit here that are profane, or have been Cavaliers, and not given some signal testimony* of their affection, they ought not to sit.

*Mr. Mitford.* I move *majore ad minus*. Most have taken it, and all should; for twenty may come in on Monday, if you pass this.

*Mr. Neville.* You have been often told you sit here on the Petition and Advice. I hope you sit here by the people's choice. I would not have that urged here, *sit liber judex*. You are judges of the law.

The oath of allegiance was done by as free consent as ever; yet it was resolved in the Long Parliament to dispense with it in some cases. Oaths are of a subtle nature.† Not but

* See vol. ii. p. 176.

† Colonel Hutchinson, as represented by his interesting biographer, had justly appreciated the highly immoral tendency of declaratory oaths, especially in an age of revolutions. Thus, on the final return of the Long Parliament, in December, 1659, when the Republicans were soon to be overpowered by the Presbyterian Royalists, Mrs. Hutchinson says: "The whole House was divided into miserable factions, among whom some would then violently have sett up an oath of renuntiation of the king, and his famely. The collonel, thinking it a ridiculous thing to *sweare out* a man, when they had no power to defend themselves against

that any man may safely take this oath; for they are no part of the legislature till they sit here, and it does not bind us not to alter the legislature. We are free to debate any part of it.

*Mr. Trevor.* We sit here, it is true, by the people's choice, but upon the Petition and Advice. There is no better way to preserve the peace of this House than by preserving unity; that we may all sit on one footing of account. There are a hundred members to come in; and shall all these be admitted without an oath? The consequence would be dangerous. I hope you will not break in upon your Petition and Advice, in such a great and essential point as this.

*Colonel Terrill.* I do not conceive you sit upon the Petition and Advice, though I do very much honour it. It was left imperfect. The English Parliament is called by the law, the old writ, without reference to the Petition and Advice.

I shall speak to the business when it comes in debate.

*Captain Hatsell.* If we sit not here by the Petition and Advice, all your enemies may sit here in your places. I am sorry to hear this doctrine.

*Mr. Scot.* The qualifications are positive. The distribution relative; so you sit here by a lapse. It was the sense of the Long Parliament to alter the distribution.*

him, vehemently opposed that oath, and carried it, (against Sr. Ar. Heslerig and others, who as violently pressed it;) urging very truly that those oaths that had bene formerly imposed, had but multiplied the sins of the nation by perjuries; instancing how Sr. Ar. and others, in Oliver's time, comming into the House, swore at their entrance [See vol. ii. p. 347] they would attempt nothing in the change of that Government, which, as soone as ever they were entered, they laboured to throw down." See "Memoirs of the Life of Colonel Hutchinson, written by his Widow, Lucy." (1810), ii. 244.

On Oaths. See vol. ii. pp. 275, 277, 278, (*notes*,) 289.

* "The Act for putting a period to the Parliament," says *Ludlow*, when introducing the military violence of Cromwell, "was still before a Committee of the whole House, who had made a considerable progress therein, having agreed upon a more equal distribution of the power of election throughout England." *Memoirs*, ii. 435.

That which frights you, is your Petition and Advice. The essential of our title is from the people. This may be a *sine*

Of this document, the Parliament's justification before the people, Cromwell, amidst all his apparent eagerness, had the cool policy to possess himself.

"He went to the clerk," says *Ludlow*, "and snatching the Act of Dissolution, which was ready to pass, out of his hand, he put it under his cloak, and having commanded the doors to be locked up, went away to Whitehall." *Memoirs*, ii. 458.

Though the late Protector frequently sought to excuse his usurpation, by charging the Long Parliament with a design of perpetuating their power, I cannot find that he ever ventured to produce, and probably he prudently destroyed that act, which he had purloined, and of which, after diligent enquiries, no traces can now be discovered; the concealment sufficiently betraying his self-conviction of a dishonourable purpose. He, however, availed himself of its provisions in the construction of both his Parliaments.

Richard and his council revived the ancient distribution of the elective franchise, which still continues with increasing inequalities. Mr. Locke ranks it (*Gov.* B. ii. 157) among the "gross absurdities" to which "the following of custom may lead," that "the bare name of a town, of which there remains not so much as the ruins, where scarce so much housing as a sheep-cote, or more inhabitants than a shepherd is to be found, sends as many representatives to the grand assembly of law-makers, as a whole county, numerous in people, and powerful in riches." *Works* (1740, ii. 219). The Long Parliament's "distribution of the power of election," which Cromwell adopted, and its improvement on the former system, *Ludlow* has thus described—

"And whereas formerly some boroughs that had scarce a house upon them, chose two members to be their representatives in Parliament, (just as many as the greatest cities in England, London only excepted) and the single county of Cornwall elected forty-four, when Essex and other counties bearing as great a share in the payment of taxes, sent no more than six or eight; this unequal representation of the people, the Parliament resolved to correct, and to permit only some of the principal cities and boroughs to choose, and that for the most part but one representative, the City of London only excepted, which on account of the great proportion of their contributions and taxes, were allowed to elect six. The rest of the four hundred, whereof the Parliament was to consist, (besides those that served for Ireland and Scotland) were appointed to be chosen by the several counties, in as near a proportion as was possible to the sums charged upon them for the service of the state, and all men admitted to be electors who were worth two hundred pounds in lands, leases, or goods." *Memoirs*, ii. 435, 436.

*qua non.* I will not say the contrary. The Chief Magistrate, he that exercises the power, has a very good army to justify it.* I have heard of a law of Parliament every year, and a triennial Parliament,† which, if not this way, might have been called another way. These gentlemen are tender conscienced.

Put off the other qualification till Wednesday; and if you will debate, debate the three-score Scotch and Irish members; and have an account brought in to validate the members for Scotland and Ireland. I would have either an ad-

Thus a Parliament, acting for the people, and unembarrassed by claims of prescriptive privilege, were prepared to disregard the legislative rights, of a numerous class of their fellow-freemen, alike amenable to the laws, as to all their dearest interests, with the proprietors of "lands, leases, or goods;" and by their consumption, contributing largely to the public revenue: while their only property was an ability to provide for the national defence and to perform those offices of ingenuity or labour, without the due execution of which, "lands, leases, and goods" would become possessions of no account.

The Duke of Richmond, in his letter to Colonel Sharman, in 1782, which I had occasion to quote (vol. ii. p. 453), says, "From every consideration which I have been able to give to this great question, that for many years has occupied my mind, and from every day's experience to the present hour, I am more and more convinced, that the restoring the right of voting, universally, to every man not incapacitated by nature for want of reason, nor by law for the commission of crimes, together with annual elections, [see vol. i. p. 403 *note*] is the only reform that can be effectual and permanent. I am further convinced that it is the only reform that is practicable." It is well known how Major Cartwright devoted a large part of his long and honourable life, to the able advocacy of the same opinion.

Thus the just claims of the *people*, in the only adequate sense of the expression, though still withheld, are better understood and more generally regarded, than in the 17th century; while, by the progress of education, the claimants are better qualified to "know their rights," and peaceably, yet perseveringly, to "dare maintain" them.

* According to *Whitlock*, "Nov. 16, 1658, addresses to Richard from the officers of the army were presented by Disbrowe. 20th. The officers of the army attended Richard, and made large professions to him of their obedience and faithfulness; and he courted them at a high rate." *Memorials* (1732), p. 675.

† See vol. i. p. 403, *notes* ‡ §.

journment or a preterition, that those that are come in may sit; and the others not sit till they be sworn.

*Colonel Eyre.* I was chosen the latter end of the Long Parliament. I refused the oath. The Commissioners reported it to the House, that I scrupled it. The oath was dispensed with, and I sat as a member.

*Mr. St. Nicholas.* I would have it either adjourned or laid aside. You have precedents in the case, that oaths have been dispensed with. I question if it was not Lord Fairfax's case about the engagement.*

*Mr. Manley.* I would not have you put off this debate, and shake foundations.

*Mr. Chaloner.* If it had not been for the Petition and Advice, you had not sat here at this time. Yet we sit not here on that Petition and Advice. You sit here by the old laws. I question whether some are old enough to take an oath.

*Mr. Weaver.* I wonder to see gentlemen so very zealous in this. I hope you will give us liberty to debate it all over, except the single person.

One hundred and twenty gentlemen of as much integrity as themselves, without arrogancy I speak it, were kept out. A dishonourable act. I shall move you in time that no such abominable order may stand in your book; as to refer us to a test without doors, after we sent in a letter.† Except it be the single person, I hope we shall have a liberty to debate it all. If you lay it not aside, I doubt all will come in question. Take first the qualification of Scotch and Irish members‡ into debate, as more honourable and more satisfactory to the House.

*Sir William Wheeler* and *Colonel White* moved to the orders of the House. A gentleman in grey clothes had sat three days; and being asked if he was a member, he refused to answer it. They desired he might be examined about it.

* See vol. ii. p. 279, *note* *. † See vol. i. p. 262, *note* ‡.
‡ See *supra*, p. 71, *note* †

It seems the fellow got out of the way, and the Serjeant laid hold on him. He was ordered to be brought in, and pay his fines. He laid all the blame on Sir John Dethick.

Being at the bar he was asked his name, he said William King; and that he had a Petition by word of mouth; and that Sir John Dethick gave him joy that he was a Parliament man,* and thereupon he came and sat; as not knowing but he was chosen.†

* "He came as a petitioner; but Sir John Dethick joyed him, last Lord's-day, of his being chosen a Parliament-man." *Journals.* This Alderman, who could thus sport with the credulity of a person so afflicted as William King appears to have been, was Lord-Mayor in 1656, and then knighted by the Protector.

† "One King, a Vintner, about the Stocks, in London, having been distracted, and being little better now, was observed sitting in the House as a member, and not being well known, was observed by some members, who desired the Serjeant to watch when he went out, and to ask him whether he were a member or not, which the Serjeant did, and confessing he was not, was called in upon his knees, and being asked the reason why he durst presume to sit in the House, not being chosen, he answered, that Sir John Dethick, one of the Aldermen of London, had given him the joy of being chose a member for the Parliament, and he thought Sir John had better intelligence than himself, and that he had sat in the House already these two days without check." *Goddard,* MS. pp. 121, 122.

"The Stocks" comprehended an extensive site, on a part of which stood the Church of St. Christopher le Stocks, removed for the enlargement of the Bank. On another part, the Mansion House was built, in 1739. The early occupations of this spot, and its appearance in 1708, are thus described:—

"Stocks Market, a fine market, chiefly for fruit, roots, and herbs, between the ends of Threadneedle-street, Cornhill, Lombard-street, Walbrook, and the Poultry. *Stow* says it was formerly a market-place for flesh and fish, and that a pair of stocks for punishing offenders, was there, from whence it had its name.

"This market was appointed by Henry Wallis, Mayor, in 1282, as being near the middle of the city. In 1322, a decree was made by Hamond Chickwel, Mayor, that none should sell flesh or fish out of the markets of Bridge-street, Eastcheap, Old Fish-street, St. Nicholas Shambles, and Stocks-market, under the penalty of forfeiting the same for the first offence, and for the second, loss of freedom. This was done by command of Edward II., in the first of his reign, under his let-

*Mr. Goodrick.* This is the person that owned the pamphlet, the Twenty-five Queries, which has treason in every line. It questions the nomination of his Highness; reflects likewise on this House, as if some members were about to betray the liberties of the people. It reflects upon the Army, as if no commission were of force since the Protector's death.

*Colonel Grosvenor.* This fellow was in the lobby, above, all day; and pulled this pamphlet out of his pocket, and was commending it to several members, and dispersed the same.

I move that he might be examined and sent to the Tower.

*Mr. Knightley.* A gentleman but stumbling in here! Sir Petition, a new-made Knight!

*Mr. Trotter.* The like by mere ignorance! and much ado to keep him from the Tower! You need not seek more matter. You hear enough against him. It is a high breach of your privilege. I desire that he may be committed to the Tower, that you examine the pamphlets afterwards.

*Mr. Launce.* I will only add two things. This man gave me one of those books. He says he was put upon it by one Dethick. It may be, he is but the fool in the play.

*Colonel Mildmay.* I would have four or five members appointed to examine him privately. There may be more in it than you are aware of.

*Colonel Okey.* I move that he be not sent to the Tower. That is too chargeable a prison. I hope in time we shall regulate these things.*

ters patent; and then this market was let to farm for 46*l.* 13*s.* 4*d.* per *annum*. In 1507, it was let for 56*l.* 19*s.* 10*d.* per *annum*. In 1543, there were here twenty-five boards for Fishmongers, and eighteen stalls for Butchers, which, with 5*l.* 13*s.* 4*d.* for sixteen chambers, amounted to the yearly rent of 82*l.* 3*s.*" See "A New View of London" i. 79.

* "A person who had sat in the House some days, being found to be no member, was, for his offence, committed to Newgate, and not to the Tower, though accounted the Parliament's prison; and that partly because the Lieutenant, after the example of his predecessors, exacted great fees, [see 'Mr. Knightley,' *supra*, p. 41.] without any authority in law, which the Parliament intended to regulate and pre-

*Sir William Wheeler.* I would have four or five appointed to examine him. It is a matter of great contempt. The pamphlets should be examined.

*Mr. Raleigh.* I would not have him sent to the Tower. You are not obliged to send him thither. You may send him to any prison.

*Mr. Speaker.* The fellow said he had a petition, by word of mouth.

*Mr. Wharton.* I move that he be asked if he owns the pamphlet.

vent for the future, as being a great grievance." *Brief Narrative*, p. 337.

The Lieutenant of the Tower, Sir John Barkstead, knighted by the late Protector, had been member for Middlesex in the former Parliament, (where he has not appeared among the speakers,) till called to the "Other House." He is described by an anonymous contemporary, no very candid remarker, as having "erected a principality in the Tower, and made laws of his own, executing the same in a martial way, over all comers."

It is added, that "the better to carry on the Protector's interest among the ear-bored citizens, he lately became an Alderman. See "History of Europe," (1706,) iv. 435.

Having been one of the members of the Long Parliament, who signed the warrant for the King's execution, he retired to the Continent at the Restoration, and became a burgess of Hanau. Repairing to Holland, to meet some relations who proposed to share his exile, he was basely betrayed into the power of his enemies, by a quondam associate, Sir George Downing, (of whom, see vol. ii. p. 192, *note*) late a servile courtier of the Protector, but now the Royal British Resident at Amsterdam. On this occasion, the Dutch Republicans appear to have readily prostituted the authority of their Government to gratify the Royal resentment, and, perhaps, not unwilling to indulge an unmanly vengeance against a member of that Parliament which had triumphed over them. Colonel Barkstead was executed at Tyburn, April 19th, 1662, when "his head was set upon a pole, and placed upon Traitor's gate, in the Tower," according to the barbarous taste of the Tudors and of the restored Stuart, unworthily imitated, to dishonour and dishearten the partizans of that finally exiled race, by the first and second princes, of the succeeding dynasty.

"Colonel John Barkstead," says *Ludlow* (who appears willing to forget the adherence to the Protectorate, in the earlier services to the

*Sir John Carter.* I move that he be searched for papers.

*Sir Anthony Ashley Cooper.* (He came into the House today.) I never heard of the fellow. He is inconsiderable. I moved that he be sent off to Newgate. I would not have him accuse himself.

*Mr. Fowell.* In this pamphlet of Twenty-five Queries, twenty-four are treason.* He labours to subvert the Government, invites the army, ministers, all professions, to sedition, and reflects upon the Parliament, as not freely chosen. I move to examine the party by a Committee, or at the bar.

*Colonel Birch.* Haply this man may neither be a wise man nor a fool. I would have him asked as to the book, and his place of habitation, &c. It may be, he will discover more. Let him withdraw, and then examine him by a Committee if you find cause.

*Colonel Thompson.* I move, that he be examined at the Tower, or by a Committee; but, he being brought to the bar, send him to the Tower.

*Mr. Herbert.* I have one of these books, delivered to me by this fellow.

*Mr. Hoskins.* It is not an offence to have one of these books; but I am sorry we are in such a distraction.

*Mr. Drake.* I would have him committed to the Gatehouse. Let him not have the honour to be committed for the book. Refer that to a Committee, to examine the book.

*Mr. Hungerford.* I move not to make the Tower a prison so common. Send him to the Gatehouse. That is more disgraceful.

*Mr. Knightley.* I move not to complicate the question.

parliament) "was a citizen and goldsmith of London, who, being sensible of the invasions that had been made upon the liberties of the nation, took arms, among the first, for their defence. He was constituted by the Parliament, in consideration of his services, Lieutenant of the Tower of London. When he was brought to confirm with the testimony of his blood, that cause for which he had fought, he performed that part with cheerfulness and courage, no way derogating from the character of a soldier and a true Englishman." *Memoirs* (1699), iii. 102.

* See an earlier discovery of such treasonable paper-shot, vol. ii. p. 134.

His offence is high enough to have him committed. Else it will be thought that we must pick some other fault, before we can commit him. I would have him sent to Newgate.

*Mr. Weaver.* Examine him, for the honour of the nation. You may discover much for your service.

*Sir Arthur Haslerigge.* You may often read in ancient journals, of men intruding into your House. Imprisonment was the least punishment. I would not have the question complicated. It is not proper to examine him upon his knees. Let him not have that advantage against you, as to report he was committed for the queries.

The question put upon Newgate, passed in the affirmative.

*Mr. Goodwin* moved to send him to the Tower.

*Mr. Knightley.* This gentleman is born to bring us five miles back, when we are at our journey's end.

Ordered, that he be called in and committed to Newgate during the pleasure of the Parliament.

He came in on this, and said, "If I have done any offence I will kneel: if your counsels be of God they will stand; if not, they will fall."

On this he withdrew.*

He was called in again. He said he was born in Pope's Head Alley. He is a vintner, a profession that has been oppressed. He never was a scholar since twelve years old, and

* "Resolved, that the Serjeant-at-arms attending this House, do take the said William King into his custody; and that he be committed a prisoner to Newgate, during the pleasure of this House, for his offence and misdemeanour, in his wilful, insolent, and bold intruding himself into this House, and sitting this day, and several other days, in this House, to hear the debates of this House, being no member of this House.

"The said William King was brought to the bar, and kneeling there as a delinquent, Mr. Speaker pronounced the sentence of imprisonment on him accordingly: whereupon he withdrew." *Journals.*

Thus the honourable House, "dressed in a little brief authority," strangely determine that a harmless intruder, whose sanity is, at least, problematical, and who has been the dupe of a cruelly facetious Alderman, is yet responsible, as a "wilful, bold, and insolent" offender.

is glad he was not; for an elder brother, that was a scholar, wronged him.

He said he was committed to Finsbury Prison,* and kept in chains. He appealed to Sir John Dethick for redress. He moved he might deliver his petition by word of mouth. He denied, as he hoped to answer it before God, that ever he delivered a book. This was contrary to what two members had affirmed. He began to talk idly, and so was commanded to withdraw.

*Colonel Allured.* He had much wrong by being ordered to be chained. It was the design of his brother to prejudice him in his estate.†

*Mr. Bodurda.* I move that the business be referred to the members for the city.

*Captain Jones.* He is a madman. After he has borne a little of your punishment, you may set him at liberty as you think fit.

*Mr. Starkey* moved to resume the debate about swearing the members.

*Sir Arthur Haslerigge.* I move not to take it up so late. Let us rise and have pity on ourselves, the better to be prepared on Monday; that, if God please, we may agree to what he thinks is best for us.

*Colonel Bennet* seconded that motion.

*Mr. Hoskins.* I move to appoint a Committee about the maintenance of ministers in Wales, as the minister moved yesterday.‡

*Mr. Knightley* seconded; and moved that the Committee of Privileges be not prevented from sitting.

* Where, probably, maniacs were confined, and absurdly treated as criminals. See vol. i. p. 73; and on "the Blind-house," ii. 112, *notes*.

† "The said William King was again brought to the bar; and being asked where he lived, and what his calling and employment was, he answered, he was a vintner by his calling, and lived at the Royal Exchange Tavern, near the Stocks; and expressed how much he had suffered by his elder brother, as he conceived, who had endeavoured to prejudice him in his estate." *Journals.*

‡ At the fast.

*Sir John Carter.* I second the motion of Mr. Hoskins; and would have a Bill brought in by Mr. Hoskins. There are many Commissioners appointed to judge of ministers, that are against the ministry.

*Mr. Freeman.* I am glad the minister's doctrine has made such an impression, that you take this into consideration. There are 20,000*l. per annum* in South Wales. How it is employed, I wish it were examined. Souls have been starved.

*Mr. Knightley.* I would have the northern counties included as formerly. I would have it examined by a Committee how the treasure was expended.

*Serjeant Maynard.* It seems the sheep are committed to the wolf. Scandalous ministers, it seems, have scandalous judges.*

*Mr. Goodrick.* I move that the northern part of Yorkshire be included.

*Mr. Wharton.* I move that the monies be accounted for, and that it go all England over.

*Mr. Lloyd.* I move, particularly, for North and South Wales, as the minister moved. Beggarly poor gentlemen are of that Commission. Let it be helpful to their beggarly friends.

*Mr. Disbrowe.* I would have Wales particularly referred to the Committee of Religion, and the rest of the nation generally.

*Sir Anthony Ashley Cooper.* There is a vast treasure arising out of these revenues. I never heard of any account. I have passed through Wales, and found churches all unsupplied, except a few grocers, or such persons,† that have formerly served for two years.

*Sir Walter Earle.* I move that the northern counties go with it.

* The learned Serjeant seems to have been incorrectly reported, as his conclusion ill accords with his premises.

† Despised as *laymen*, (though perhaps) "of mother-wit, and learned without the schools," both by Episcopalian clergy, and "plain Presbyter,"—Milton's "Priest writ large."

It was moved, and so ordered, that the question be divided, and that there be several Committees appointed to examine the revenues of the Church, and ministers' maintenance in North and South Wales, Monmouth, the four northern counties, and Yorkshire; and that all members that serve for those places be of those Committees. The Committee for Wales to meet on Tuesday, and for the northern counties on Wednesday next, in the Exchequer and Duchy Chamber.

The debate about the oaths of the three members fell.*

The House rose at a little past twelve.

The Committee of Privileges sat in the House about the business of the election for the county of Oxford, where the dispute lay between Lord Falkland and Sir Francis Norris.

Resolved against Sir Francis Norris. Mr. Jenkinson† was there.

The debate about the borough of Midhurst was taken up; but for want of time, adjourned. Serjeant Waller had the chair.

*Mr. Starkey* and *Mr. Goodwin* moved, in the business of Oxford, that a new writ go out, because of the uncertainty of the election.

It was not seconded.

*Sir Arthur Haslerigge* said, he spent 1200*l.* in the beginning of the Long Parliament, which he felt yet; and gave 1600*l.* at first coming into the Irish war against the rebels; so that he had something when he began.

One said he had well improved it.

"I have so," said he. "Time will work all things." ‡

The Committee adjourned till Tuesday.§

* See "Mr. Bodurda," *supra*, p. 71.

† The other member for the county. See *supra*, p. 24.

‡ See Vol. ii. p. 423, *note* ‡.

§ On Bishop Reynolds, *supra* p. 66, *note* †, it may be added, that he appears to be still popular as a theologian. His Works, in six volumes, 8vo. were published in 1826, by Mr. Chalmers, with a life of the author.

*Monday, February* 7, 1658-9.

I came late, and found the House in debate upon the report about Horsham, from the Committee of Privileges.

Resolved to agree with the Committee, that a writ issue out for a new election.

Lord Falkland was called in upon the report from the Committee of Privileges.*

William King was released this morning upon his petition.† He has not sat so long in prison as he did in the House.

*Sir William Wheeler* offered a petition from Major Audley, that he be released from his imprisonment.

The petition was read, signifying his sorrow for offending the House, and desiring he may have his liberty to prosecute at the Committee of Privileges.

*Mr. Bish.* I move, for that reason, that he be released, to the end that he may prosecute his petition against us; which we fear not.

*Sir Walter Earle.* You drowned an eel when you sent him to the Tower, where he has a house and good accommodation. He has been but a little while imprisoned. He is in orders. I hope you will not think him capable of being a member; so that his reason ceaseth.‡

* See *supra*, pp. 24, 84.

† On "the petition of Ralph King, citizen and vintner of London, on behalf of his son, William King." *Journals.*

"King, the mad fellow that was committed upon Saturday, was this day enlarged, it being moved that he was indeed a distracted person: but it was talked of as ominous, abroad; that in the beginning of a Parliament, we had called a King to the bar, and committed him to Newgate." *Goddard MS.*, p. 122.

‡ In the Act of 1642, which deprived the "Lords Spiritual" of their seats in Parliament, (see vol. i. p. 391, *note*,) it is declared that "Bishops, and other persons in holy orders, ought not to be entangled with secular jurisdiction; the office of the ministry being of such great importance that it will take up the whole man, and for that it is found by

*Captain Baynes.* I move to have him released.

*Mr. Goodrick.* I move to have him bound to good behaviour, as usual in dealing with offenders of this kind.*

The orders of the day were called for, and read. The order was upon the Act for Recognition.

*Mr. Fowell* and *Mr. Fleetwood* moved to send into the Hall for all the members to attend.

*Mr. Steward* and *Mr. Pedley* seconded the motion.

*Mr. Weaver, Mr. Walter Young,* and *Mr. Neville.* The mace cannot go without an order, because the Judges and Commissioners of the Seal are removed to another House. It cannot be presumed but that your members should attend.

Resolved, that the mace be sent for the members, to attend here according to the duty of their place.

*Mr. Weaver.* By the orders of the House, a business of this nature was never taken up till ten o'clock.† The House being full, I question the reason.

long experience, that their intermeddling with secular jurisdictions, hath occasioned great mischiefs and scandal, both to Church and State."

Therefore, "his Majesty, out of his religious care of the Church, and souls of his people, is graciously pleased that it be enacted, that no Archbishop or Bishop, or other person that now is, or hereafter shall be in holy orders, shall have any seat or place, suffrage, or voice, or use or exercise any power or authority, in the Parliament of this realm, nor shall be of the Privy Council, or Justice of the Peace, or execute any temporal authority." See Scobell's *Acts,* (1658,) p. 21.

There was a very modern enactment, to prevent any clergyman from sitting in the House of Commons in future Parliaments, in consequence of Mr. Horne Tooke, (who, in early life, had been in Deacon's orders,) having taken his seat. He had been nominated to a Cornish borough by the late Lord Camelford.

* "This day Lewis Audley, who was committed to the Tower about the affront done to my brother, Bish; upon his petition, setting forth that he had a right of election to prosecute before the Committee of Elections, was discharged. Mr. Turgis moving also in his behalf." *Goddard MS.,* pp. 122, 123.

† "It not being then ten of the clock, and the lawyers not come up to the House, it was moved that the Serjeant take the mace, and go to every bar in Westminster to call them up to attend, that the House may be full, upon so important an occasion. This motion was opposed by

The mace being returned, and the lawyers with him, and the House being very full,

The Act intitled, "An Act of Recognition of his Highness's right and title to be Protector and Chief Magistrate of the Commonwealth of England, Scotland, and Ireland, and the dominions and territories thereunto belonging," was read the second time.*

*Sir Arthur Haslerigge.* I wonder not at this silence in a business of this weight. I have much weakness upon me.†

The business that we are about, is the setting up a power over this nation. It will be necessary, for method's sake, to consider what we have been, what we are, and what we shall be. I must beg patience to look far back. Time was, this

some, as showing too great a respect to that profession, and that it might as well be done to every member about the town. Others opposed it upon the account of losing no time, because, in the absence of the mace, nothing ought to be done until it returns. Yet, in regard the business was of great weight, and the assistance of the long robe requisite, and that it has been usually done before, and that in case it could as conveniently and easily be done to others about the town, perhaps it should be so done to them, therefore the mace was ordered to go down, and call the members out of the hall, and from every bar. But note, the mace cannot be borne out of the House without a vote to that purpose." *Ibid.* p. 123.

* Beginning thus, "Whereas his Highness, immediately after the death of his Highness's late father, became the lawful successor to succeed to the government of, &c. to the great joy of the people, testified by their general consent and approbation; and that God had invested him with power and authority, and that his Highness hath taken the government upon him. And although this be ample satisfaction, &c. yet we, the two Houses of Parliament, do think it our duty to recognize and acknowledge, and pray that it be enacted and declared, that his Highness is the lawful Chief Magistrate and Protector, &c.; and that all the people be commanded to obey him accordingly." *Ibid.* pp. 123, 124. See the Act at large. "Thurloe State Papers," (1742) vii. 603, 604.

† "The bill being read, Sir Arthur Haslerigge, moving himself upon his seat, was called up, as if he had an intention to speak, which it seems he had not, but being called up, and seeing so great a silence, not wondering at it, it being so great a work, and prefacing something of weakness then upon him, yet hoping that if he had anything to deliver, that God would enable him, he began a very long harangue." *Goddard MS.* p. 124.

nation had seven kings, and no doubt but the strongest put down the weakest, against the will of the rest. I never knew any single person to have power, willing to lay it down. After it was in one single person, then came in the Conqueror. The Kentishmen stood up for their liberties, and in some sort, preserved liberty to all the rest.*

Succeeding Kings, sons and others, began to grow very oppressive to the people's liberties. Then rose up the noble Barons who struggled so long, till with their swords, they obtained our *Magna Charta*.† That our Barons were men of great power, appears by what they compelled the King to grant; the whole estate being in them and the Bishops, Abbots, and King. They were so great, and sensible of their greatness.

The Government was then in King and Parliament, Lords and Commons sitting altogether.‡ They withdrew and went into another House, to make a distinct jurisdiction. Thus the Lords had all but the power of the purse, which, to this day, preserved the liberties of the nation. Then the Government was enlarged into three estates, King, Lords, and Commons, and continued thus above three hundred years. §

* "The whole nation, in sequel of time, was reduced to one entire monarchy, ruled by one single person, but that was varied according to the successes and several providences which it pleased God to ordain unto us, until at last came in one whom they called William the Conqueror, and in that time stood up the never to be forgotten Kentishmen, to preserve what they could, liberty for themselves and the rest." *Goddard MS.*, p. 125. See vol. i. p. 210, *note*.

† See vol. i. p. 406, *note* †. ‡ See vol. ii. p. 349, *note* †.

§ "These Barons were then very great, for they had the whole Government of the nation, there being at that time but one House, one great Council; they had all power and jurisdiction with them, and left no power to the Commons but that of the purse, which by God's great mercy hath been the only thing that hath preserved the liberty of this nation.

"But not long after, the Barons, by the civil wars being much diminished in their power and greatness, and it being the interest of the single person, the King, to have it so, thereupon the Commons having got a greater share in the lands and possessions of the nation than they had before, and being thought a convenient balance

As all governments have their beginning from time, so time puts an end to them. The government, continuing so long, it had contracted rust. The people groaned under great oppression, both as men and christians.

The Council Table bit like a serpent; the Star Chamber like scorpions. Two or three gentlemen could not stir out, for fear of being committed for a riot. Our souls and consciences were put on the rack by the Archbishop. We might not speak of Scripture, or repeat a sermon at our tables. Many godly ministers were sent to find their bed in the wilderness.* The oppression was little less in the lower courts and in the special courts.

Altars were set up, and bowing to them enjoined. Pictures were placed in Church-windows, and images set up at Durham, and elsewhere†; with many other exorbitancies

and check for the greatness of the Barons, they were admitted into a proportionable part of the Government. And from that time, the government of this nation was divided into three estates, and so it hath continued for above three hundred years." *Goddard MS.*, pp. 126, 127.

* See vol. ii. p. 324.

† Dr., afterwards Bishop, Cosin, (see vol. i. p. 307,) was appointed in 1624 one of the Prebendaries of Durham. Among the twenty-one articles of impeachment preferred against him by the Commons, in 1641, are the following:—

I. "That he was the first man that caused the Communion-Table in the Church of Durham to be removed, and set altar-ways.

VII. "That the first Candlemas day, at night, that he had been in the Church, he caused three-hundred wax candles to be set up and lighted in the Church at once, in honour of our Lady, and placed three-score of them upon and about the altar.

VIII. "That in this Church, there were relics of divers images, above which were remaining the ruins of two seraphims, with the picture of Christ between them, all which, when Queen Elizabeth came to the crown, were demolished, which so continued till Dr. Cosin came to that Church, who, being Treasurer, caused the same to be repaired and most gloriously painted." *Biog. Brit.* (1789,) iv. 283.

In 1632, the Recorder of Salisbury, by a sentence in the Star-Chamber, was committed to the Fleet, and fined 500*l.*, for having (by an order of vestry, but without license from his Majesty or the Bishop) demolished a window in a Church in that city, containing a "description of

introduced, both in Church and State. The Archbishop would not only impose on England, but on Scotland, to bring in the Book of Common-Prayer upon them. They liked it not, and, as luck would have it, they would not bear it.* He

the creation. To express God the Father, were painted," says *Rushworth*, "divers little old men bare-footed, and in long blue and red coats, and at every of the six days' work, such a little old man was placed, with the joining of some created thing, to denote what was made on that day. The sun and moon were painted: and in that old man's hand, representing God the Father, was placed a carpenter's compass, as if he had been fixing the proportion of the sun. For the seventh day, the little old man was painted sitting, to represent God's rest.

"At the hearing of the cause, Laud, Bishop of London, speaking in favour of the painter, mentioned a place in Scripture, where God is called the Ancient of Days, which might make the painter mistake; but Edward Earl of Dorset replied, that thereby was meant God from eternity, and not God to be pictured as an old man creating the world with a pair of compasses." *Hist. Col.* (1706) ii. 123—126. See *Ibid.* pp. 219—222; *State Trials*, (1776) i. 399—418.

* Bishop Guthry, who died in 1676, relates these circumstances in his Memoirs, apparently from his own observation:—

"The King, at his coming into Scotland in 1633, had brought with him Dr. Laud, then Bishop of London, shortly after Archbishop of Canterbury, one who had much power with his Majesty, but was generally hated by the people. He, beholding our form of worship, did, in conference with our Bishops, and others of the clergy, tax the nakedness thereof in divers respects, but chiefly for want of a liturgy, whereby he thought all might be helped.

"Bishop Laud, moving the King to declare it to be his will that there should be a liturgy in this Church, his Majesty commanded the Bishops to go about the forming of it. The Bishops were busy about the work, and at length, towards the end of the year 1636, completed it.

"In Edinburgh, July 16th, 1637, the ministers in their several pulpits made intimation that the next sabbath the service-book would be read in all the Churches, extolling the benefit of it, and exhorting the people to comply with it. That the work might be done in St. Giles's Kirk, with the greater solemnity, the Bishop of Edinburgh came there himself from Holyrood House to assist at it.

"No sooner was the service begun, but a multitude of wives and serving-women, in the several Churches, rose in a tumultuous way, and having prefaced awhile with despightful exclamations, 'a pape! a pape! Antichrist! pull hid down!' threw the stools they sat on at the preachers; and thereafter invaded them more nearly, and strove to pull them from their pulpits; whereby they had much ado to escape their

prevailed with the King to raise an army to suppress them. The King prevailed with his nobles to conquer them into it. He went to their country, and finding himself not able to conquer them, came back.

He called a Parliament, which was named the Little, or Broken Parliament, disbanded not his army, but propounded that we should give him a great sum to maintain the war against Scotland. We debated it, but the consequence of our debate made him fear we would not grant it. We had, if he had suffered us to sit. Then did Strafford and his Council advise him to break us and to rule arbitrarily, and that he had an army in Ireland to make it good. For this Strafford lost his head.* The King suddenly broke that Parliament.† I rejoice in my soul it was so. He raised the gallantest army that ever was, the flower of the gentry and nobility. The Scots raised too, and sent their declaration into England, that by the law of God and nature they might rise up for their own preservation; and thus they came into England. At Newburn the armies met. We were worsted. God was pleased to disperse our army, and give them the day. The Scots passed Newburn, and advanced to Newcastle.‡

Then some of our nobles, Say, Essex, and Scroop, humbly petitioned his Majesty for a Parliament. He, seeing danger, called a Parliament. This was the Long Parliament. The first proposition was to raise money for the Scots. We gave them a brotherly assistance of 300,000*l.* They showed themselves brethren and honest men, and peaceably returned. Then money was pressed for our own army. The House, considering how former Parliaments had been dealt with, was unwilling to raise money till the Act was

hands. And for the Bishop, the magistrates found difficulty enough to rescue him; and when they had brought him without the Church, he was yet in danger of being murdered in the street, had not the Earl of Roxburgh received him into his coach, which drove so quickly that they could not overtake them." See "Memoirs of Henry Guthry, late Bishop of Dunkeld." (1748) pp. 18—23; *Rushworth*, ii. 299; *Harris*, ii. 326; *Neale*, ii. 272.

* See vol. ii. pp. 22, 287, 442, *notes*. † See *supra*, p. 54, *note* ‡.

‡ See Rushworth's *Hist. Col.* (1706,) iii. 186—201.

passed* not to dissolve the Parliament but by their own consent. It passed freely by King, Lords, and Commons. This was wonderful; the very hand of God that brought it to pass; for no man could then foresee the good that Act produced.

The King then practised with the Scots, then with his army, to assist him against this Parliament, and to make them sure to his particular interest. Sir John Conyers discovered it, to his everlasting fame. Mr. Pym acquainted the House. Divers officers of the army, Lord Goring, Ashburnham, Pollard, and others, were examined here.† They all absented. The House desired of the King, that they might be brought to justice; but the King sent them away beyond sea.

The King demanded five members, by his Attorney-General. He then came personally to the House, with five hundred‡

* May 10, 1641. † See vol. ii. p. 443, *note.*

‡ *Whitlock* says, "the King came, guarded with his pensioners, and followed by about two-hundred of his courtiers and soldiers of fortune, most of them armed with swords and pistols." *Memorials,* (1732,) p. 52.

To the King's "ordinary guard," Ludlow adds "those desperadoes that for some time he had entertained at Whitehall, to the number of three or four hundred." *Memoirs,* i. 24.

Lord Clarendon represents the King as "attended only by his own usual guard, and some few gentlemen, who put themselves into their company in the way," and that, "commanding all his attendants to wait at the door, and give offence to no man, himself, with his nephew, the Prince Elector, went into the House, to the great amazement of all: and the Speaker leaving the chair, the King went into it." *History,* (1705,) i. 358.

*Rushworth,* who was Clerk of the House, and avowedly an eye-witness, appears in the following account, to differ with Lord Clarendon, as to the situation of the King's attendants:—

"As the King entered the House with his guard of pensioners, and halberdiers, he cast his eye towards the place where Mr. Pym used to sit, but not seeing him there, he went towards the Speaker, saying, 'By your leave, I must borrow your chair a little.' Having taken the chair, he looked about on the members as they all stood up, uncovered, and then made a speech.

"In the evening, his Majesty sent for Mr. Rushworth, the Clerk,

men at his heels, and sat in your chair.* It pleased God to hide those members. I shall never forget the kindness of that great Lady, the Lady Carlisle, that gave timely notice. Yet some of them were in the House, after the notice came. It was questioned if, for the safety of the House, they should be gone; but the debate was shortened, and it was thought fit for them, in discretion, to withdraw. Mr. Hampden and myself being then in the House, withdrew. Away we went. The King immediately came in, and was in the House before we got to the water.

The Queen, on the King's return, raged and gave him an unhandsome name, "poltroon,"† for that he did not take

whom he observed to take his speech in characters, requiring a copy of it; who, pleading in excuse, how Mr. Neville was committed to the Tower for telling his Majesty what was spoke in the House, he smartly replied, 'I ask you not to tell me what was said by any member, but what I said myself;' upon which, a copy being transcribed, it came out in print next morning, by the King's order." *Hist. Col.* (1708,) iv. pp. 237, 238. See *Parl. Hist.* (1762,) x. 164.

*Lilly* says that "all this Christmas, 1641, there was nothing but private whisperings in Court, and secret councils held by the Queen and her party, with whom the King sat in council very late many nights." Then having described this outrage on the Parliament, as "the result of those clandestine consultations," he adds:

"This rash action of the King's lost him his crown. It was my fortune, that very day, to dine in Whitehall, and in that room where the halberts newly brought from the Tower were lodged, for the use of such as attended the King to the House of Commons. Sir Peter Wich, ere we had fully dined, came into the room I was in, and broke open the chests wherein the arms were, which frighted us all out that were there. However, one of our company got out of doors, and presently informed some members that the King was preparing to come unto the House." See "Observations on the Life and Death of King Charles," (1651,) in Baron Maseres's *Select Tracts*, (1815,) i. 170, 171.

* See *supra*, p. 19, *note*.

† This language well agrees with the previous manner of the royal consort, her husband's unconscious conductor to the scaffold. It is thus described by Mrs. Macaulay:

"The King went to the Queen's apartment, and expostulated with her, on the hazard of the attempt, expressing something like a determination of not putting it in execution. The Queen was transported with passion at this want of resolution: 'Go, coward,' exclaimed this impe-

others out; and certainly if he had, they would have been killed at the door.

Next day the King went to the City. They owned the members.* Thereupon he left the Parliament, and went

rious woman, 'pull these rogues out by the ears, or never see my face more.' The submissive husband obeyed." Mrs. Macaulay adds a conjecture of that time, that "the Countess of Carlisle overheard the dialogue between the King and Queen." *History*, (1769,) iii. 142.

* "Notwithstanding his failure of success in the attempt," says *Lilly*, "so wilful and obstinate was the King, in pursuance of that preposterous course he intended, and so desirous to compass the bodies of these five members, that the next day he posted and trotted into the City, to demand the members there. He convened a meeting at Guildhall, and the Common Council assembled: but *mum* could he get there; for the word *Londonderry* was then fresh in every man's mouth.

"But, whereas the author of the King's *Portraiture* complains that the insolency of the tumults was such, that his Majesty's person was in danger in the streets; this is a very untruth. For, notwithstanding his Majesty dined in the City that day, yet he had no incivility in the least measure offered unto his person; only many cried out as he passed the streets—'Sir, let us have our just liberties; we desire no more.' Unto which he several times answered, 'They should, &c.' An honest citizen, as I remember, threw into his coach a new sermon, the text whereof was, I remember, 'To thy tents, O Israel.'

"Jan. 10, The five demanded members were brought into the House of Commons with as much triumph as could be expressed. Several companies of trained bands marching to the Parliament to assist, if need were. There were upon the Thames River I know not how many barges full of sailors, having some guns ready charged if occasion were; and these also came in multitudes to serve the Parliament. A word dropt out of the King's mouth a little before, which lost him the love of the seamen. Some person being in conference with his Majesty, acquainted him that he was lost in the affection of the seamen; for they intended to petition the House, &c. 'I wonder,' quoth the King, 'how I have lost the affection of these water-rats;' a word sure that slipped out of his mouth unadvisedly; for all men must and do know, that the ships of England, and our valiant sailors, are the very strength of England." *Observations*, pp. 172, 173.

The following passages will explain the allusion to *Londonderry* in the former part of this note, premising that the twelve principal City companies, in 1613, on the condition of raising 40,000*l.* for "the new plantation in Ulster," had received a royal grant of that portion of the Irish lands forfeited to the crown.

from step to step, till he came to York, and set up his standard at Nottingham, and declared the militia was in him.

The House of Lords then sent down to declare that the King had broken his trust. The word of the King, seduced by evil counsel, lost us forty lords. The House declared the militia to be in them.* That was then a great question. Commissioners were then sent out in the name of the King and Parliament. Then was there the King against the Parliament, and Parliament against him.† There was at this time, no thought to alter Government. We met at Edgehill. The King went to Oxford, and gave thanks for the victory, and we at London gave thanks for the victory:‡ and so it

"1632. The whole county of Londonderry was sequestrated, and the rents levied for the King's use; and Bishop Bramhell was appointed chief receiver.

"1634. By sentence of the Court of Star Chamber, it was adjudged, that the letters-patent of King James I. should be surrendered and brought into the Court to be cancelled."

In 1641, on the King's return from Scotland, when he "was invited to dinner in the City of London, he made a public declaration that he was much troubled at the judgment, and promised the City that the grant should be restored." This the war prevented, and in 1656, "the Protector, by letters-patent, conferred the same rights as enjoyed under the Charter of James I." See "A View of the Irish Society," (1822,) pp. 34, 56, 60, 62.

* See vol. ii. p. 435, *note* * "The King," says Roger Coke, "as unstable in his resolutions as inconsiderate in his actions, retracts all he had done, and promises not to do so again: but to no purpose. For the members resolve not to trust to his royal word, prerogative, and absolute will and pleasure, and therefore will tear the power of the militia from him." *Detection*, (1097,) p. 278.

† See vol. ii. p. 448, *note* ‡.

‡ "October 23, 1642, was a very great battell fought between Keynton and Edge-hill by his Excellency (the Earl of Essex) and his army; and that of the King, led by his Majesty. At which time his Excellency's army killed the King's general, the Earl of Lindsey, the Lord Aubeny, Sir Edmund Verney, and divers more; and took prisoners the Lord Willoughby, three Colonels, and many hundred more, and brought away sixteen of the King's ensigns." *England's Worthies*, (1647,) reprinted 1821, p. 3.

"However the victory was uncertain," says Roger Coke, "the suc-

was in many other battles. Thus the English pushed on both sides, and much precious English blood was spilt on the ground. Several propositions, at length, were tendered; but God hardened his heart. He would not accept. Then we came to make a new model, and a Self-denying Ordinance. Thereupon this noble Lord* was chosen the Parliament's General. The Commission as to him, was from the Parliament only; the name "King" was left out. I appeal to all the world for the undeniable, the unquestionable victories after that. We had not one doubtful battle. The King after that never gave thanks. In process of time, there were propositions, again and again, seven, eight, or nine times,—at least seven times,—sent to the King, desiring, for ourselves, our ancient liberties with our ancient Government, but his heart was still hardened. Next we shall find him in the Isle of Wight, where the last propositions were tendered to him.† He would not consent, though his sword was broken, and he was in the lowest condition. He denied. Many gentleman in this House, of great worth, foreseeing our troubles, apprehended there was enough in the King's condescensions for a well-grounded peace. But the officers of the army were otherwise opinioned. Finding the King not sufficiently humbled, they thought the good cause would be betrayed. The officers seized several members.‡ Those that stayed within, asked for them, but could not have them.

They seized upon the King, demanded justice, and brought him to judgment. He would not answer, not owning our authority, because he was accountable only to God; whereas, God never made such a creature, to govern men, and not to be

cess was not so, for the King took Banbury town and Castle, and Oxford; and Prince Rupert took my Lord Say's house at Brought, and made excursions near London: whereupon the Parliament recalled Essex to defend themselves." *Detection*, (1697,) p. 297.

* "Looking upon Lord Fairfax, who sat always next him." *Goddard MS.*, p. 128. "Mr. John Barwick," a spy in London for Charles Stuart, thus writes to "Sir Edward Hyde," (Feb. 16, 1658-9): "Fairfax sides with the Republicans, and carries a name above Lambert, for the present." See "Thurloe State Papers," (1742,) vii. 616.

† Sept. 18, 1648.

‡ See vol. ii. p. 387, *note*.

accountable to men. Yet he received his judgment, and submitted his head quietly to the block. The edge of justice struck it off. See the wonderful hand of God! The King dead, some members of the House, the late General, and Commissary-general Ireton, they would have it determined, (which the wisdom of the House thought meet) that not only this line, nocent and innocent, but that kingship should be abolished, as dangerous useless and burthensome.* Then there was an end of one of the three estates. The Lords, most of them being gone, the remainder, amazed and troubled at this, adjourned their House; but never came again unto it. As they had their beginning from themselves, so they had their end from themselves. The Commons approved the Lords' adjournment, and did by them as they had done by the King: and there was an end of that estate. Two of the three estates were thus gone. Then, for the third estate, that, God knows! had been much shattered and broken. Force was much upon us. What should we do? We turned ourselves into the Commonwealth. By advice of the soldiers among us, a declaration to that purpose went out from the Army. We continued four years, before we were put an end to. In which time, I appeal to all, if the nation, that had been blasted and torn, began not exceedingly to flourish. At the end of the four years, scarce a sight to be seen that we had had a war. Trade flourished; the City of London grew rich; we were the most potent by sea that ever was known in England. Our Navy and Armies were never better.

Yet, after these estates were ended, we found a new trouble. The wars were not then ended. Waters broke out. A strong remnant got into Colchester. Our brethren of Scotland were not so firm upon that great shaking of kingship. We sent an army into Scotland, to Colchester, to Wales. This noble Lord† went to the gates of Colchester and conquered, and put an end to all the English war. Then a general was sent into Scotland. Our late Protector that died was then general of all our forces. You know the great mercy. There

* See vol. ii. p. 388, *note*. † Lord Fairfax.

we obtained that memorable victory at Dunbar. What care did the Parliament then take to furnish their army from London with all necessaries, by land and in ships; all provided with the greatest diligence. None but a numerous company of good and honest-hearted men could have done the like. The King of Scots came in with a great army. Twenty thousand men came suddenly and freely to Worcester. The people voluntarily rise and assist, in the greatest numbers that were ever read. The Scotch Army returned, not three in a company. Man by man they returned in rags. This battle, the 3d of September, 1651, put an end to all the miseries of war in England and Scotland. Our wars in Ireland were then not considerable.

This done, it is true here was only remaining a little part of that triple cord, and you know what became of them. I heard, being seventy miles off, that it was propounded that we should dissolve our trust, and dissolve it into a few hands. I came up and found it so; that it was resolved in a junto at the Cockpit. I trembled at it, and was, after, there and bore my testimony against it. I told them the work they went about was accursed. I told them it was impossible to devolve this trust. Next day, we were labouring here in the House on an act to put an end to that Parliament and to call another. I desired the passing of it with all my soul. The question was putting for it, when our General stood up, and stopped the question, and called in his Lieutenant, with two files of musqueteers, with their hats on their heads, and their guns loaden with bullets. Our General told us we should sit no longer to cheat the people. The Speaker, a stout man, was not willing to go. He was so noble, that he frowned and said he would not out of the chair, till he was plucked out; which was quickly done, without much compliment, by two soldiers, and the mace taken: and there was an end of the third estate also.* I rejoiced then, from the soul, that the question was not put. But I would have passed the severest sentence upon those that did this horrid business, that ever was passed upon

* See *supra*, p. 74, *note*.

men, and would have been from my heart the executioner of it. But I forgive them now, both the dead and the living. There was no possibility to dissolve this Parliament, the remaining part of the three estates, but by our own officer. He only had power. Our enemies had none.

Surely all the English blood was not spilled in vain? It was a glorious work of our Saviour to die on the cross for our spirituals. This is as glorious a work for our civils, to put an end to the King and Lords. The right is, originally, without all doubt, in the people. Undeniably and most undoubtedly it reverts to the people: the power being taken away. Like the gordian knot, it asked but Hercules's* sword to cut this knot. This done, our General, in 1653, looked on himself as having all power devolved upon himself: a huge mistake! The power was then in the people. If by conquest he had come in, he might have had something to say. It was undoubtedly in the people. It was a mistake in him; you shall see it.†

He was pleased to select a number of gentlemen, good, honest men,‡ hither brought. He gave them power. They came into this House, and voted themselves a Parliament. They acted high in some things, and soon cracked. Some of

* A misnomer for Alexander.

† This paragraph is thus reported by the other member of this Parliament:—

"But as the crucifying of Christ, though barbarous and horrid in itself, was the most beneficial and glorious for our souls, so this action, though thus wicked and unjust, was (at least, may be, if we will improve it) the most advantageous to our civil interest, that can be; for this put a final end and dissolution of our long Government, by King, Lords, and Commons, the three ancient estates of this nation, and devolved all right of power and government upon its original fountain, the people again. When power is plucked up, whither can it return, but to its right centre, the people? And there was no other way but the sword, to bring to an end this threefold Government. This was done 20th April, 1653. The General then looked upon himself as having all power devolved upon him, which was a huge mistake, for he had his commission from the Parliament, and that being dissolved, his commission ended." *Goddard, MS.* p. 132.

‡ See vol. ii. p. 67, *note*.

them ran to Whitehall, and returned their power.* Whence it came, thither it went. Judge whether power could pass thus, either to or from him.

This not serving the turn, then there was contrived an Instrument of Government,† with our General at the head of it. This was first delivered to him in Westminster Hall. The Judges, most that were in town, and the Mayor and Aldermen of the City of London, were summoned, few knowing what it was for. There was an oath in this Instrument, which he took; and after that took upon him the name of Protector.

After that, a Parliament was called to confirm this. I was chosen one of those that the people sent up. Something was put in the writ, concerning our owning of this government in that Parliament; but, come hither, some gentlemen were pleased to say, being in the dark. I remember one learned gentleman, very well read in Scripture, said openly, that "other foundation than that could no man lay," (the latter words left out.) Others said that the Parliament and Protector were twins, but the Parliament was the elder brother.

I then said no one Parliament could limit or impose upon me in any other. This doctrine was not well liked by the Protector. We were all turned out Such a thing as never was done! An oath was made without doors, to be taken by us, and was set at the door. Those that would take it came in. Those that would not, were kept out by pikes.‡ Knowing the privilege, that no power without doors could make an oath, I went away, and divers more gentlemen.

Those gentlemen that did sit, after five months were raised without giving any confirmation. It needed not, if other foundation could no man lay. They did nothing.

Then came the last Parliament, in 1656. I was again chosen, but not for any particular place; but for the whole county. When we came I found pikes again; one set to my breast. I could not pass without a ticket from the Council.

* See vol. ii. p. 67, *note*. † See vol. ii. p. 274, note *.
‡ See vol. i. p. 273, *note* †.

I found in the hall above fifty of us. We joined in a letter to the Speaker;* declaring our willingness to serve, and that we were kept out. After two or three days attendance we were sent to the Council for a ticket. I durst do no such thing. I had lifted up my hands to God for the privilege of Parliament. I could not do it. Two hundred were kept out. Upon this, divers that had been admitted left the House.

Then the government fell dangerously sick, and it died. Another foundation was laid; a Petition and Advice; and this must be the law and the foundation of all! And these must be the fruits, all we must enjoy, after the spilling of so much blood and so much treasure! Pardon me, if I thus make bare my mind to you.

This was a forced Parliament, because some of us were forced out; an imperfect Parliament, a lame Parliament, so much dismembered. We are here the freest, and clearest, and most undoubted representatives that ever were since the desolation of the three estates, King, Lords, and Commons. I know not one member kept out: if I did, I would on my knees beg his admittance. I hope God will direct us how to get out of this great darkness, as the minister told us that we have been in since this great desolation. What was done in the last Parliament is not a sufficient foundation to bring peace and settlement to this nation. The people of England were never more knowing and sensible of their privileges and liberties, nor better prepared to have a settlement from this free representative. We can do here whatsoever is for the good of the people. We have power over their purses and persons; can take away whole laws, or part of them, or make new ones.† I will tell you what we cannot do. We cannot set

* See vol. i. p. 262; ii. 348, *notes* ‡ *.

† "The Parliament," says Sir Thomas Smith, (and this Speaker may have had the passage in recollection,) "abrogateth old laws, maketh new, giveth order for things past, and things hereafter to be followed, changeth right and possessions of private men, defineth of doubtful rights, whereof is no law already made, appointeth subsidies, tailes, taxes, and impositions. All that ever the people of Rome might do either *Centuriatis Comitiis* or *Tribunitiis*, the same may be done by the

up any power equal to the people; either in one person, or another House. We are trusted with no such power.

God is the King of this great island, as Mr. Calamy told us. I hope he is King of our hearts. God has done this work. King, Lords, and Commons: it was not in our thoughts at first. Let not us set up what God has pulled down; not plant what God has rooted up, lest we be said to build against God.

We see what a confusion we are in. We have not prospered. Our army at Jamaica prospered not.* The trade and glory of the nation are much diminished. The council have been exceedingly bewildered. The government you see twice set up, presently pulled down. The strange oppression

Parliament of England. Every Englishman is intended to be there present, either in person, or by procuration and attorney;—and the consent of the Parliament is taken to be every man's consent." See "The Commonwealth of England," (1633,) pp. 77, 78.

This representation of popular rights was made in 1565, by a Secretary of State, under a royal executive, too frequently disposed to violate them. It may serve to show, against the now happily exposed and exploded misrepresentations of Hume, the once favourite "idol of historic taste," that Charles was driven from his throne, and at length closed his life on a scaffold, not for resisting useful political innovations, but for exceeding the defined and long established limits of regal authority.

Dr. Towers was among the early contributors to that detection of Hume, (whom he justly classes among those *de veritate non multùm laborantes*,) which Mr. Brodie, with a free spirit of enquiry, superior to national partialities, has ably completed. See "Observations on Mr. Hume's History of England," (1778,) in "Tracts on Political and other Subjects, by Joseph Towers, LL.D." (1796,) i. 233—430.

* In 1655, the Protector sent out an expedition under Penn and Venables, to annoy the Spaniards in the West Indies. Dr. Bates having described their unsuccessful attempt on Hispaniola, with the loss of more than 600 men, (*sex centis, aut suprà, desideratis*) thus proceeds:—

"Dein ad *Jamaicam* vela faciunt, occidentem versùs, insulam peramœnam, quasi deliciarum hortum; cujus arenâ sine magno negotio potiuntur, Hispanis discessum pactis. Ibi verò scelerum vindex, dira grassata est in Anglos lues, quæ, duobus exceptis militibus, pervasit atque delevit intra sex menses exercitum universum. Postea paulatim novi militis et commeatûs adventu refocillati ex omni Jamaica Hispanos arcent." *Elenchus*, (1676,) Part ii. p. 307. (They now sail for Jamaica,

by making Acts of Parliament without a Parliament;* raising monies; denying *habeas corpus;* sending learned long robe gentlemen to the Tower, for asserting *Magna Charta,*

towards the west, a pleasant island, even a garden of delights. This they quickly possess; the Spaniards capitulating to depart. But a plague, the avenger of wrong, violently attacks the English, and in six months destroys the whole army, except two soldiers. Reinforcements arriving with supplies, they at length finally expel the Spaniards.) See Harris's *Lives,* (1814,) iii. 382—387.

Governor Hutchinson says, that "Jamaica being conquered, Cromwell," who "had been very desirous of drawing off the New-Englanders to people Ireland, after his successes there, renewed his invitation to the colony of Massachusets to remove, and to go and people that island." To "the agent of the Colony in England, he was pleased to express, that he did apprehend the people of New England had as clear a call to transport themselves from thence to Jamaica, as they had from England to New England, in order to their bettering their outward condition. God having promised his people should be the head and not the tail: besides, that design hath its tendency to the overthrow of the Man of Sin. A few accepted the invitation." See "History of Massachusets, (1761,) pp. 190, 192.

Jamaica was described in this year, (1655,) as "of a rich and fertile soil, and in nothing less provided for the necessities of man's life, than either Hispaniola or Cuba; well stocked with cattle, and plentifully stored with fruits of all sorts; yielding abundance of cotton-wool, more than either of the other islands: only it wanteth the convenience of some good havens and ports, which it hath but few. And the sea round about it so shelvy, and full of rocks and broken islands, that the coast of it is held to be not a little dangerous: and therefore little frequented by merchants or others; there being, at present, only three small towns inhabited in the whole island." See "America faithfully represented, by N. N. Gent." (1657,) p. 484.

* In "The Government of the Commonwealth, as it was publicly declared at Westminster, 16th December, 1653," and "published by his Highness's command," the 30th Article (p. 40,) provides "that the Lord Protector, with the consent of the major part of the Council, for preventing the disorders and dangers which may otherwise fall out, both at sea and land, shall have power, until the meeting of the first Parliament, to raise money for the purposes aforesaid, and also to make laws and ordinances, for the peace and welfare of these nations, where it shall be necessary; which shall be binding and in force until order shall have been taken in Parliament concerning the same." See these Ordinances in Scobell's *Collection,* (1658,) pp. 275—368.

such as all the Kings of England never did;* all this because we knew not the good mind of God. We were in darkness. It is God's mercy that we are here to declare ourselves in this place.

I shall now come to speak to the bill, whether to be committed or not. I confess, I do love the person of the Lord Protector. I never saw nor heard either fraud or guile in him. I wish only continuance of wealth, health, and safety to his family. I wish the greatest of honour and wealth of any man in this nation to him and his posterity; but this bill to recognize is a hard word. I never heard of such a bill but in King James's case; which was to declare him of the undoubted line to the crown, and so having a right to succeed. We must here take for granted the government, the Petition and Advice, which was not done in a free Parliament. It may be skinned over for a time, but will break out. The people are not pleased. What foundation soever is built, let it rise from us, that are the clear representatives. For the authority itself, it appears by that Petition that the Protectorate was

* "Mr. Conye's case is so notorious," says Mr. Bethell, "that it needs little more than naming. He was a prisoner at Cromwell's suit, and being brought to the King's Bench bar, by a Habeas Corpus, had his counsel taken from the bar, and sent to the Tower, for no other reason than the pleading of their client's cause; an act of violence that I believe the whole story of England doth not parallel." See "The World's Mistake in Oliver Cromwell," (1689,) pp. 45, 46.

This case occurred May 18, 1655. The counsel were Maynard, Twisden and Wyndham, (see vol. ii. p. 340, *note* *.) They were not released till they had humbly petitioned the Protector. See *Mercurius Politicus*, No. 298.

Lord Clarendon details, no doubt *con amore*, the particulars of a transaction highly disreputable to the Protector's Government. He admits, however, that "in all other matters, which did not concern the life of his jurisdiction, he seemed to have great reverence for the law, rarely interposing between party and party." *History*, (1712,) iii. 649, 650.

It appears from *Whitlock*, that about this time, (May, 1655,) "Baron Thorpe and Judge Newdigate, were put out of their places, for not observing the Protector's pleasure in all his commands." *Memorials*, (1732,) p. 625.

for his life; but it appears not how he appointed his successor; we must not take that upon trust, but be fully satisfied. I would not have this committed at present; but let it lie here. Never begin with the person first, but agree what trust he shall have. I forget not the great cause of our mischiefs, the influence of the kings over the judges. To make the King judge of necessity; that cut all our purses, that brought all our evil upon us. I would have us seriously advise and consider what we may do, as the people's representatives. The way of wisdom is everlasting peace. There is no danger to the nation, so long as this representative sits here. They are the supreme power. The way to prevent fire is to do our duties. We shall be preserved from the fire of hell and the fire of men. Let us let this rest, and consider of foundation stones. If a single person be thought best, to be accountable to the people for mal-administration, I shall submit to the majority.

*Mr. Bulkeley.* The gentleman has done the House a great deal of right in the narrative; yet he has something omitted whereby those gentlemen that were then at school, whereof I am one, may be misled. I shall collect his omissions of part of the history.

Self-defence, undoubtedly, is in this House. The King protected delinquents against justice. This was one of the causes of war. Exorbitancy, in the Church Government; toleration of popery; many causes of the war.

You engaged in a war. God was pleased to give an answerable success. We held forth the grounds of our war, and appealed to God, angels, and men, that success should not mislead us. We engaged the whole body on this score: all with confidence that we should all hold to the case as then stated. True, in the latter part, you were more successful; but your army was less exorbitant at first. You were engaged upon a solemn league and covenant,* as highly and solemnly as could be to engage men's hearts. This was a link to the three nations. This was thrown behind your door as an almanack out

* See vol. ii. p. 214, *note* *.

of date. (It was said so here.) We sent away our brethren with frowns. After Colchester surrendered,* proposals went to the King, and personal addresses. I was one sent, so can give the better account. They were persons, generally, of as great ability and integrity as the nation had We brought a good return; but, we being not then ripe for the mercy of peace, it was blasted. This deserved a debate, a solemn debate. There were near three hundred; a great House in those days. It was taken up on Monday morning, and continued all that night till next morning. I cannot say it was without interruptions, for we had papers of terrors from the army sent in to us. There was a story of the long sword,† by that gentleman. I wish I had never heard it. We came to a question, and it was carried with a vote, (no question then of the Government) sixty against it. Many votes of aged persons were lost, and interruptions, else there had been two to one. The House adjourned.

The next morning‡ I found Colonel Pryde at the door, and heard one by him tell him, "This is the person." I came through pikes and muskets. I was arrested by that gentleman. He asked my name. I would not tell him. I said I was a member. He said, "You have a mark upon you. You are a noted man." I asked for my charge. When he saw I would not go quietly, two ushered me up into Surrey Court, where I found thirty, and fifteen came after. We were kept in hold that night; then ushered to Whitehall; and kept there till next day two o'clock, without food or conveniency. We were carried to the King's Head, and other inns, with great reproach. To prison we had coaches, because it was dirty weather. It is said, it was not done in this House. I could say it was contrived here; and somewhat else too. Five members were appointed to examine every member upon the point of that vote, what his judgment was.

A government was brought in; a Commonwealth, I was going to say; a monster was introduced, and that was dis-

* August 27, 1648. See *supra*, p. 97. † See vol. ii. p. 423.
‡ December 6, 1648. See *Ibid.* p. 387, *note* *.

solved, without either coroner or inquest upon it.* This brought another change. It is new to me that ever it was moved to resign up their power to a single person. If that gentleman refused, I shall honour him for it. It is said the Commonwealth flourished.

After this we had an Instrument of Government, which had much of good in it, but in the bowels of it took away your rights. That liberty was not left you which is your due: not that I would set the crown upon the head of the people. I gave my attendance to that Parliament that was called by it. Never Parliament gave out their spirits and labours, to make a happy government and foundation for posterity as they did. That unhappily fell from the gentleman, "other foundation,"† &c.; that might have been spared. But at length it was submitted to our debate; and if that had gone on, it had provided well to circumscribe the single person: only it had not another House in it.

I am engaged, in my place and calling, to promote a House of Lords. Those Lords that were faithful, it were the greatest dishonour that ever were to kick them out. You have it materially before you. I hope it is the purpose of this House that the Government be submitted to them. It was hastily done. Holding fast the head: that is to say, a single person and another House, you may debate the parts. It is improperly moved to reject it, and not to proceed upon it.

Unless the chief magistrate have this approbation, every rascal may affront the chief magistrate. He may be arrested, which a member of this House has a privilege against. I would have that about the other House laid aside, and take the recognition singly. Let that about the other House come singly, as to qualifying them; to prevent returning to that government, which that worthy gentleman in his motion aims at. To acquiesce in that which they see against the sense of the nation, were madness.

*Mr. Scot.* It was moved that you first digest a government, and then fit the person. The last motion does antici-

* See vol. ii. p. 416, *note* †. † See *supra*. p. 100.

pate your resolution. We may have liberty to propound any government to the people. *Salus populi* will warrant it. I am not fond of any child of my own. I shall say as Hushai said,* "What God and this people do, I shall acquiesce in."

If bound by the Covenant,† you must restore the House of Lords as it was, and the like by the King. His last expression is a *felo de se*. I shall mind you of one *hiatus*, the first rape committed on this House, by the apprentices that came here‡ and told us we must vote the King here in safely. After the scabbard was thrown away, we must call home our irreconcileable enemy, to be at his pleasure. If the House had held to it, it had been too hot for you. We denied it. There was discourse at the door, too much countenanced. They said our guts should be about our ears if we did not vote it. The attack on the Train Bands was countenanced and abetted by the profane Cavaliers. Still God bore witness against that family; that cursed family! I may call it so yet. None adheres to it but he carries mischief with him. Many of us were forced to go to the army for safety; while others sat safely here and made laws. All these things were done *flagrante bello*, interruptions on both sides. I confess I was one of that Parliament that sat. As to the privilege of Parliament, it has been sufficiently told you. The Covenant was not called an Almanack.§ By virtue of that Covenant I took myself obliged to all I did.

* 2 *Sam.* xvi. 18. † See *supra*, p. 105, *ad fin.*

‡ April, 1648. See *Whitlock* in vol. ii. p. 386, *note*, *Parl. Hist.* (1755) xvii. 92—103. According to *Whitlock*, "this tumult by the apprentices began in Moorfields, about tipling and gaming on the Lord's Day, contrary to the Ordinance of Parliament."

This "tumult and outrage," appears to have been formidable. *Whitlock* describes the "small party of the army," about London, as having "behaved themselves, against a great multitude of men, with much gallantry and resolution." He proceeds to "notice the incertainty of worldly affairs," that "when the Parliament and their army had subdued their common enemy, then they quarrelled among themselves, the Army against the Parliament; when they were pretty well pieced together again, then the apprentices and others make an insurrection against the Parliament and Army." § See "Mr. Bulkeley," *supra*, p. 105.

This was hammered in Scotland,*——— and agreed to destroy the King's person, if he will not carry it so as to preserve religion and liberty.† I must then stand and fall by the judgment of those gentlemen, whether we had cause to fear that the King would break all these liberties and privileges. It is impossible any man should delight in a man of so much blood as the King was. The King was not the supreme power. He was seven or eight times sent to with propositions,‡ and would not yield. Had he been quiet after he was delivered up to us by the Scots,§ knowing him to be our King———¶ So long as he was above-ground, in view, there were daily revoltings among the army, and risings in all places; creating us all mischief, more than a thousand Kings could do us good. It was impossible to continue him alive. I wish all had heard the grounds of our resolutions in that particular. I would have had all our consultings *in foro*, as any thing else was. It was resorted unto as the last refuge. The representative, in their aggregate body, have power to alter or change any government, being thus conducted by Providence. The question was, whose was that blood that was shed? It could not be ours. Was it not the King's, by keeping delinquents from punishment, and raising armies?

> "Brought first unto defence, until he 's at the wall,
> And then he must offend: that is agreed by all."

The vindictive justice must have his sacrifice somewhere. The King was called to a bar below, to answer for that blood.‖ We did not assassinate, or do it in a corner. We

* See vol. ii. p. 214, *note* *.

† This appears to be in the MS. an imperfect sentence, and not very easily reconciled to the terms of the Covenant, which proposed, among other great objects, "the honour and happiness of the King;" and by the third article, "to preserve the rights and privileges of the Parliaments, and the liberties of the kingdoms, and to preserve and defend the King's Majesty's person and authority, in the preservation and defence of the true religion and liberties of the kingdoms."

‡ See *supra*, p. 96. § See vol. ii. p. 384, *note* †. ¶ Blank in the MS.

‖ "I have not heard of any (even of the Long Parliament) excepting

did it in the face of God, and of all men.* If this be not a precept, the good of the whole, I know not what is; to pre-

Mr. Scot, that have spoken any way reproachfully of his late Majesty, only Sir Henry Vane said, (and truly enough) that if the power of government was not in the people, the guilt of the King's blood would lie upon them for ever." Barwick to Hyde, Feb. 16, 1658-9. See "Thurloe State Papers," vii. 616.

* Mr. Fox, (as Mr. Godwin has remarked, when enquiring into the "judgment to be made of the death of Charles,") says, "it is much to be doubted, whether his trial and execution have not, as much as any other circumstance, served to raise the character of the English nation, in the opinion of Europe." See "History of James II." p. 16; "History of the Commonwealth," ii. 685.

Sir Theophilus Biddulph, one of the members for London, testified against Mr. Scot, on his trial, in 1660, that "in Richard's Parliament," he heard him say, "that he did desire, when he died, that a tomb-stone might be laid over him, with this inscription: 'Here lies Thomas Scot, who adjudged to death the late King.'"

Mr. Scot, amidst the sufferings and indignities which attended his last hours, appears to have expected, like the regicides generally, a vindication of his memory in more enlightened times. To those who, just before his execution, would have drawn from him a confession of guilt, as "the most likely means to prolong his life, some of his last words were, that God had engaged him in a cause not to be repented of, I say," he added, "not to be repented of."

Mr. Justice Cooke, who drew up the charge against the King, and "subscribed it in the name of the Commons of England," expressed in "a Letter written from the Tower," the expectations he indulged, no doubt in common with Mr. Scot and their political associates, that it would, at length, "appear, that they were not traytors, nor murderers, nor phanatics, but true Christians and good Commonswealth's men, fixt and constant to the principles of sanctity, truth, justice, and mercy, which the Parliament and Army declared and engaged in; and to that noble principle of preferring the universality before a particularity: that they sought the public good, and would have enfranchized the people, if the nation had not more delighted in servitude than in freedom."

To enhance the bitterness of death, Mr. Justice Cooke was drawn from the Tower to Charing Cross, on a sledge, "whereon was also caried the head of Major General Harrison," (executed three days before) "with the face bare towards him; and, notwithstanding that dismal sight, he passed rejoicingly through the streets, as one borne up by that spirit which man could not cast down."

Mr. Hugh Peters, (see vol. i. p. 244) who was executed immediately after, was "made to sit within the rails at Charing Cross, to behold the

serve the good cause, a defence to religion and tender consciences. I will not patronize or justify all proceedings that then were.

We sat four or five years in the posture of a Commonwealth, and fought more in that time than ever before; Scotland and Ireland all lost; Dublin and Derry only left. I remember the cadency of the words, infallible evidence, that the Scots would endeavour to restore the King to his patrimonial rights. To prevent them from making England the seat of war, we went to their own doors. The General sent out a declaration, calling God to witness that he intended nothing of domination, but only to assert the interest of the English nation.

The Dutch war came on. If it had pleased God and his Highness to have let that little power of a Parliament sit a little longer,—when Hannibal is *ad portas*, something must be done *extra leges*—we intended to have gone off with a good savour, and provided for a succession of Parliaments;* but we stayed to end the Dutch war. We might have brought them to oneness with us. Their Ambassadors

execution of Mr. Cooke; one came to him, bidding him, with opprobrious language, to repent. He replied, "Friend, you do not well to trample on a dying man."

When Mr. Cooke was cut down, and brought to be quartered, one they called Colonel Turner, called to the sheriff's men, to bring Mr. Peters near, that he might see it; and, by and by, the hangman came to him, all besmeared in blood; and rubbing his bloody hands together, he tauntingly asked: "Come, how do you like this, Mr. Peters? How do you like this work?" To whom he replied, "I am not, I thank God! terrified at it; you may do your worst." See "The Indictment, Arraignment, Tryal and Judgment at large of Twenty-nine Regicides, the Murtherers of his most Sacred Majesty King Charles I., of Glorious Memory." (1739) p. 73, 235, 257, 259.

Such were the sanguinary triumphs of a restored royal legitimate, and such was the closing scene, dreadful, yet dignified, in the life of a man to whose name and memory Edmund Burke, on a remarkable occasion, could offer nothing except an eloquent invective. But Hugh Peters appears to have been a public-spirited patriot, and Edmund Burke was earning a royal pension; due, indeed, to his talents, though dearly purchased by his courtly application of them.

* See *supra*, p. 73, *note* *.

did desire a coalition. This we might have done in four or five months. We never bid fairer for being masters of the whole world. Not that I desire to extend our own bounds. We are well, if we can preserve peace at home. If you be fain to fight Holland over again, it is vain to conceal it.

That gentleman says the Parliament went out, and no complaining in the streets, nor enquiry after them.* That is according to the company men keep. Men suit the letter to their lips. It is as men converse. I never met a zealous assertor of that cause, but lamented it, to see faith broken, and somewhat else. I will say no more. It was as much bewailed, at the Instrument of Government. A petition, the day after the Parliament was dissolved, from forty of the chief officers, the Aldermen of the city of London, and many godly divines, (except the rigid Presbyters, too well-wishers to Mr. Love's treason,†) besought to have that Parliament restored. But the Protector, being resolved to carry on his work, threatened, terrified, and displaced them; and who would, for such a shattered thing, venture their all? You have had five changes. This is the fifth, and yet the people have not rest. It may be the people may think of returning to that again, or it may be to another government.

The Romans continued Consuls one hundred years. There were endeavours to bring in kingship, and many lost their heads for it. Brutus's own sons died under the axe, rather than their father would suffer kingship. Then came the *Decemviri*, to collect the best laws in all nations, still *jussu populi*, to make peace and war; to make laws; to make magistrates; to frame twelve tables to be standing laws.

I would not hazard a hair of his present Highness's head. Yet I would trust no man with more power than what is good for him and for the people. I had rather have 100*l. per annum*, clear, than 200*l.* accountable. He is yet at the door. If you think of a single person, I would have him sooner than any man alive. Make your body, and then fit your head, if you please, one head; else we must debate all the limbs over again,

* See *supra*, p. 107.

† See vol. ii. p. 88, *note* †.

either in a Grand Committee, or by twenty or thirty gentlemen. In the mean time lay this Bill aside.*

*Major Beake.* I shall not take up much of your time, to relate or answer all the stories. Though they have said much, yet those that come after them may find gleanings.

Those stupendous providences may be observed by other men. They draw this conclusion, that the state of a Commonwealth is best for the grandeur and splendour of a nation; that the opposite to a single person is the best government, and that no Government can be but what has its power from this House.

When that woful discrimination was made between the good people of this nation, and the engagement pressed, it was a sad and lamentable time with the best of men, and reached the bowels of your best friends. The worthy patriarch that preached (Dr. Reynolds) felt it.† They were not such halycon days, but they brought tears from the eyes of the best men. If ever a godly ministry were browbeaten and put under deck, it was at that time. A Petition was put up to this House on behalf of the godly ministers by two worthy persons, one serves for Worcestershire. I shall ever honour them for owning that cause at that time. All errors, opinions, and blasphemies, got root in that time; levelling principles,‡ agreement of the people,§ nothing monstrous

* "Bulkeley answered Sir Arthur with another long narration; rectifying some mistakes as he pretended; but here began the brawl between the two parties, the one showing the mischiefs and the grievances we suffered under the old Government, and the other the extravagancies of the times, whilst we were under a Commonwealth.

"Scot answered Bulkeley as smartly, justifying the proceedings of the remnant of the old Parliament, and admiring the successes of the Commonwealth." *Goddard MS.* pp. 133, 134.

† See *supra*, p. 66, *note* †. ‡ See vol. i. p. 49, *note*.

§ *Whitlock* mentions, "Nov. 9, 1647, a Committee of the General Council of the Army, appointed," among other objects, "to consider the case of the Army stated, and a paper called the Agreement of the People.

"Nov. 23. A Petition delivered to the supreme authority of the nation, presented to the Commons, was read and voted to be a seditious and con-

but that time produced. When we make the comparison, we may bless God we are on this side the waves and surges that those times produced.

I am for the commitment of the bill. I see nothing in it to cause delay. It is too late to say that all the power is in this House. See your constitution. Not but that much in that Petition and Advice may admit debate, so it touch not the fundamentals. The Boaz and Jachin of Solomon's Temple,* you cannot alter. That is not in the people. It is disputable to me that all power is in the people. If so, the people in Parliament represented, have power. Then the last had the power. If any thing be urged as to force, it makes all that was formerly done as inefficacious. This is as valid as any act formerly done. I know not how they will deliver themselves from this dilemma. I wished there had been no bar. Yet, I bless God for it, a great good produced out of a great evil. To dispute him here, is to question foundations. It nulls the obligation without doors. Either we swear to him, as our Supreme Magistrate, or else to a nonentity. We are met to declare a supreme magistrate; not to make a Chief Magistrate, as is said. This bill was only brought in to obviate what was working without doors, to alter your Government. All the world will think he had a good title, and now we are so sceptical as to question it. You will contract a greater trouble than you are aware of. My motion is, that you refer it to a Committee.

*Mr. Nathaniel Bacon.* Repetitions do but breed trouble. I would neither have it laid aside, nor committed. Will you

temptuous avowing and prosecution, of a former petition and paper annexed, styled an Agreement of the People." *Memorials* (1732), pp. 277, 280.

Mr. Scot, then a Major, and Colonel Eyre, another member of this Parliament, were implicated in these proceedings. According to *Rushworth*, "Major Scot and others animated the soldiers to stand to a paper called the Agreement of the People. On which order was given, for the commitment of Colonel Eyre and others into the Marshall's hands, and Major Scot was sent up to the Parliament, he being a member of the Commons." *Hist. Col.* (1708), vi. 298.

* 1 *Kings*, vii. 21.

refer it to a Committee, either grand or private? Let it be debated in the House, beginning with, "Be it enacted."

*Mr. Starkey.* Through the various changes of good and evil, we are arrived at the present posture we are in. These worthy gentlemen* need not say any thing to justify themselves, nor to look back at what is past.

The main objection is, that it appears not that his Highness was declared. I believe some here can satisfy you. But, *cui bono*, the people have manifested their satisfaction already, both by addresses, and by sending us hither. They have sent us hither to represent them, by his Highness's call. We have owned him in our assembling, in taking our oaths at the door, and there is a greater acknowledgment in that. *Cui bono* is not all, but *cui non malum.*

The right of call is as essential a part of a Parliament as any. This very act has acknowledged him to be Chief Magistrate. I would not have us put the nation in that danger, as to ask the question. I find nothing in this Bill, of the Lords' House. I would as cheerfully and readily conclude this business, which will be of great consideration to the quiet and settlement of the nation.

*Mr. Knightley.* We have no cause to dislike one another's nest. I would have it committed. I would have the word "declare." Take your rise, not from addresses from the counties, but from the judges' and sheriffs' proclamation of it, and your being called hither by it. I would have it debated in a Grand Committee.

*Colonel White.* I wish the sins of the nation may be forgiven and remembered no more.

The Government of this nation is not the administration, but the laws. For proof of this, have recourse to former precedents of kings' oaths, of the present oath of his Highness. One king pulled down another, and they declared one

* This speaker was soon prepared to become a witness, seemingly a willing witness, against Mr. Justice Cooke, (see *supra*, p. 110,) his intimate acquaintance, to whom he professed to "owe all his knowledge in the laws;" "one who had eminently acted, and at length suffered with these worthy gentlemen." See "The Trials of the Regicides," pp. 94, 95.

another tyrant; the judges were the same; the laws the same. The judges were never touched for execution of the law. You have heard of several changes of Government; yet the learned judges have not doubted to take commission from all those powers, upon that supreme law, *salus populi*, the law fundamental.

The law is a dead letter only, the difference is in the Administration. I suppose the Government intended by this Bill, is this fundamental law. This was in the late King, by way of trust, which he forfeited. The root of all former miseries was about the Militia. This proved a bloody quarrel.

I would have you settle this fundamental and other fundamentals, before you settle any single person; else you will leave them to danger and uncertainty. I hope you will so leave it, that it may neither be danger to the Government, nor snare to the governed. It is dangerous to swerve from the fundamentals. Witness Major-Generals.

I doubt wringing of the nose will bring blood. I doubt, if we look back, we shall find much dissatisfaction; if forward, we may do much for satisfaction; at least, the satisfaction of the people. You will not feast your eyes with any Government that has been since 48.

I observe characters of great designation upon his Highness, I am sure without flattery. Set upon the pinnacle by Providence, I cannot but conclude there is the hand of God in it. I never saw his person in my life.

I would have some previous votes. I shall offer,

1. In order to the Government fundamental, that you will declare that the law is the Government of the nation.

2. That this Government, in the hands of person or persons, is by the way of trust and office.

3. That this shall be committed to his Highness by way of office and trust, with such limitations as you shall after agree on.

I would have it committed to a Committee of the whole House, that may bring you in a Bill or Bills to settle these things as well for the Government as the Administration.

If I have said any thing amiss, it is not out of design, but duty.

*Mr. Manley.* I would ask one question: by what authority you sit here, if you come in upon new foundations? We are at stake, as well as his Highness.

There is no better foundation for your proceeding than the Petition and Advice. It is a great honour that this Bill came first into this House. The question, I hope, is merely as to the expression of it. Here is *evidentia rei.* There needs no affidavit.

The Courts of Westminster Hall evidence it; the army: your meeting here acknowledgeth it.

I hope there is no competitor. It is said abroad, you intend a Commonwealth.

It will beget great confidence at home and terror abroad. I would have it amended at this table.

*Mr. Neville.* The proper question to debate is, whether to commit it or no; if you will take that up at this time of day.

*Mr. Trevor.* I would not have you adjourn indefinitely, to leave this business, *sine die.* I have but a short speech to make.

Resolved, that this debate be adjourned till to-morrow, at nine.

*Mr. Weaver.* The business of Mr. Streete was appointed to-morrow, that he answer his charge. I would have that first done.

*Serjeant Maynard.* I move that nothing intervene: for the gentleman's speech may prove as long as the speech we had to-day,* which lasted from nine to twelve. If you go on at this rate, to have one speech a day, the Dutch will give you 2,000*l.* a day to do so.

*The Attorney-General* seconded that motion.

Resolved that nothing intervene, and the House rose at almost two o'clock.

* By Sir Arthur Haslerigge. See *supra*, pp. 87—105.

*Monday afternoon.*

The Grand Committee for Religion sat the first time; Mr. Bacon in the chair. A Sub-Committee was appointed to inquire how Biddle came to be released, being imprisoned for blasphemy.*

Another Committee was appointed to bring in a Bill to remedy the inconvenience touching the approbation of ministers; the same Committee to bring in a Bill for Commissioners for ejecting of scandalous ministers. T. B.† *unus.*

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*Tuesday, February* 8, 1658-9.

*Mr. St. Nicholas.*‡ I find two objections to lie in my way, in speaking against the Recognition.

1. That we ought not to speak against foundations; as if that liberty had been taken away by the oath which we took at the door. But, in answer to that, I hope we are not spreading of nets, or laying of snares for one another. I have sworn to be faithful, and I hope in discharging of that faith I may have liberty to speak; especially finding the faith I have sworn to the Protector twisted with the liberty of the people.

2. The Petition and Advice hath laid a foundation already, and it is too late to deny that now. But, Sir, that is little above a year old, and can yet scarce speak English for itself. I conceive it is but a sandy foundation, and that you will not build upon it. Besides, I pray, observe the manner of obtaining that law; when above two hundred members of the

* "Thursday, 5 July, 1655. Mr. Biddle, (see vol. i. p. 57,) was apprehended by warrant from the Lord Mayor of the City of London; and, this day, by the care of the officers of the city, the dispute at Pauls, touching the deity of Christ, was dismist." See "Perfect Proceedings of State Affairs." No. 301.

† Thomas Burton, the writer of this Diary.

‡ Almost entirely from the *Goddard MS.* pp. 134, 135.

House duly elected were kept out by force, and many that voted there, I mean the Irish and Scottish members, there being then no law in force for them, had no more right to vote than the vintner at the bar. And, farther, it was carried but by three, and in a precipitant and unparliamentary way.

But as to the matter of that law, it is somewhere said, that nothing can be added or taken from it. I wish we do not draw God's judgment by such light eloquence.

It is said we cannot untie the knots. But I would not have it said that any knot cannot be untied in this place, and I think that that law called the Petition and Advice, is the most destructive to the nation of any that ever passed within these walls, because the militia and negative voice are placed in the single person, with another negative, and charged upon us.

King James was wont to say that Kings were made for Commonwealths, and not Commonwealths for Kings. If you find that a single person so qualified be not for the good of the people and the Commonwealth, I hope you will alter it in that particular. But if you will confirm as this makes him, you will put as great power into his hands as ever King had. I profess, with sobriety and in the singleness of my spirit, that I know not what the messengers of the people shall then answer at their return, to such as shall ask what we have done for their liberties, but only *ruina Angliæ*.

Now God hath put a power into our hands; considering what exceptions have been taken to former endeavours of settlement, let us lay such foundations as shall be free from such exceptions. So you may well be called a healing Parliament.

I therefore move that the debate be referred to a Grand Committee of the House.

*Sir Robert Goodwin.* If ever we were called upon to settle and compose things, certainly now. Let us eschew what may cause difference hereafter, that we may be able to answer it to God and the world.

The Long Parliament did great and glorious things for the first eight years. Then, I confess, it is best to sigh them out in sorrowful silence.

But, briefly, as to the Bill. What I shall propound has been propounded already; that we should proceed to recognize and acknowledge his Highness to be Protector of England, &c. upon good foundations, and in doing so we shall be true and faithful. Draw it into an Act. But we have another trust from the people to discharge, for our country. We cannot proceed so far as to establish the House of Lords now sitting. It would not consist with the fundamental constitution of the nation. If so, then it is against the law; against the oath, the greatest tie. But it will be said;

1. We are upon a new footing.

We are a Parliament of England; not setting up a Parliament of France or any other nation.

2. This comes in with a legislative power.

But all the circumstances must be examined.

3. We are his Highness's greatest council.

But we must not alter old laws. A law that took away the Star Chamber, provided that if any one do an act against the law of the nation, he shall lie under a great guilt, and be unable to dispose of any thing that is his own. This law is in force, but this House of Lords would not consist with the House, in oath. We must in that be very tender.

*Temp.* i. *Edw.* III. A Judge did rule against the oath of the Supreme Magistrate. This was urged by John Pym in the beginning of the Long Parliament. What was thought of this Judge? He was by the next Parliament condemned to die, because it was not only done contrary to his own oath, but the oath of the Supreme Magistrate.*

* I cannot find any record of such a transaction, i. *Edw.* III. February 19, 1388. *Rich.* II. this sentence of the Parliament was "executed the same day," upon Sir Robert Tresilian, Lord Chief-Justice of England, "that he should be carried to the Tower, and from thence drawn upon a hurdle through the City of London, to the gallows at Tyburn, and there to hang by the neck; and that the execution should

If we proceed to recognize his Highness, we shall be true and faithful to him, and build upon a true foundation. It will preserve him and us, to build upon a good foundation, and prove a blessing from God to posterity.

*Mr. Mitford.* That which calls me up is the concern of my own spirit, and of the public good, and the oath I have taken. As two hundred men went up with Absalom,* I came in with the integrity of my conscience, and an oath upon me religiously done. Every oath carries in the bowels of it a curse. In the original it signifies a curse. God do so to me, and more also.

1st. Particular. The safety of his Highness's person. If that may be provided for, I shall leave all the rest.

2d. Of more public concernment. The present safety and good of this nation. Yesterdaynight, I had intelligence that the Hollanders were working day and night, preparing a very formidable fleet. I am afraid this debate will be long, and it may retard the proceedings of the Navy. I would have you put a speedy end to it.

*Mr. Drake.* I know not how long the debate we are upon may last. There may be a long interregnum, and many inconveniences may happen to this nation. Yet I am for the

be done upon him by the Marshall of England, taking to his assistance the Mayor, Sheriffs, and Aldermen of London."

December 22, 1640, on the accusation of "the Lord Chief-Justice Bramston, and four other Judges," a speaker, whose name was not preserved, but whom Sir R. Goodwin might have recollected to be Mr. Pym, thus refers to the earlier impeachment:—

"Our honourable ancestors taught us, in the just and exemplary punishments of Chief-Justice Tresilian and his complices, for giving their judgments out of Parliament, against the established laws of Parliament, how tender they were of us. How careful then ought we to be, to continue those laws, and to preserve the liberty of our posterity.

"I am far from maligning the person, nor, in my heart, wish I the execution of any man; but certainly it shall be a justice well-becoming this House, to lay their heads at his Majesty's mercy, who laid us under his feet; who had made us but tenants at will of our liberties and our estates." See *Parl. Hist.* i. 457, ix. 189.

* 2 *Sam.* xv. 11.

commiting of the Bill. But I would have it, in the meantime, asserted, that the present Lord Protector is the undoubted Chief Magistrate or Governor of the three nations of England, Scotland, and Ireland, &c.

His Highness is admitted by your call and the people's acknowledgment. His authority is *materia substrata*. The ascertaining of his power is very necessary. It will avoid the hindrance of home and foreign intercourse. Justices will otherwise be slack in performing their offices.

If we should come to a Commonwealth, there would be twenty kings in a Committee; which would be a greater oppression than the Seven Kings.*

My motion is that you declare his Highness to be the undoubted Governor and Lord Protector of the three nations.

*Sir John Lenthall.* I am for a single person to govern this nation. We have had good success under them. A kingdom is but a great family.

To prevent inconveniences, I would have the single person to be declared, and to be regulated and bounded as soon as may be, that he may not impose upon us. We have suffered in our laws, liberties, and properties; and we may unravel this Government so far as to bring us where we were.

We cannot be so disingenuous as not to admit the other House to be part of the Constitution. If a better Government had been presented, I should probably have been of their opinion. I think it but cynical and fanciful. I had rather have a cottage here, than a glorious palace in the air. I would have his Highness made as great as ever was King in England, that he may defend the Protestant religion.

My motion is, that you proceed to pass the Bill, and the sooner the better.

*Mr. Nathaniel Bacon.* It was well moved that 2,000*l.* a day would be given by the Hollander, for you to spend time in these long speeches.†

It is our undoubted constitution to be governed by a single person and a Parliament. There never was any other Government, neither in England nor Scotland. There have

* See *supra*, p. 88. † *Ibid*, p. 117.

been three hundred sessions of Parliament in England since the Conquest (per Sir Edward Coke.)

The Long Parliament, at first, never dreamt of any other Government. A change of Government was never moved in Parliament till by the late Lord Protector, yesterday ten years. A single person was voted useless, and you yourselves voted useless also.

I could tell you current stories of the tyranny of a Commonwealth. Look into Carthage; Athens. See Sir Walter Raleigh.* Every man had liberty to find out the richest to destroy for himself.

Therefore I would have his Highness, by a previous vote, declared to be Protector and Chief Magistrate, and Governor of these nations. Else a fortnight's time may be spent in this debate.

*Sir Arthur Haslerigge.* It is against the orders of the House, to move us by arguments of fear, or any other arguments without doors. They ought not to be made use of within this House, so as to pass great things over on that account. We should be above it. We came to serve God and our country, and not to make business of greatest concernment to be huddled over in haste. Let us lay foundations for posterity.

*Sir Walter Earle.* We have had stories of flat-bottomed boats, but we did always esteem of them accordingly.

*Mr. Edgar.* We cannot bring the constitutions of the Saxons, Romans, or Normans, to our purpose.

The Long Parliament had good things in it: *de mortuis nil nisi bonum.* They had a good constitution. Other Parliaments had not so good a constitution. By our oath we are not so bound up, but we may dispute it.

* He says of the Carthaginians, (b. v. c. 1. s. ii.), that "the people, in later times, usurped too great authoritie in their councels," and that "this, together with the trust they reposed in hired soldiers, were helping causes of their destruction:" of the Athenians, (b. iii. c. 8. s. i,) that they "were eager and violent, suddaine in their conclusions, and as hastie in the execution." To these, he prefers the Lacedæmonians, who were "slow in their deliberations, full of gravitie, but very resolute;" while both "deserved the plague of tyranny, having first given

One side would have no Lords at all; others, none of those, *consilium magnatum*, very ancient, if my book fail not. But in the country whence I come, the people are much discontented that the ancient nobility should be neglected and set aside. I speak not for those that have forfeited. *Ubi culpa, ibi pœna.* The laws are great protectors of their privileges. I am no Leveller. It is as much justice to give a man honour as any pecuniary debt. No, I am for a House of Lords, upon this ground; because ancient. The elder ought to have priority over the younger. I am a younger brother myself, and I honour my elder. I would not have oaths to be the foundation of your declaration.

Peace and justice are the pillars of a Commonwealth. The Temple was not built in time of war. (44 *Psalm.*) An equal distribution of justice, hence came all powers. The Lord Protector has printed it to the eyes, that it is his principle to be advised by Parliament. I am much taken with it. He agrees that the purse is yours. I should thence think that he admits you also a property in the sword. I have no way to know his heart, but from his mouth. I never saw the Lord Protector but twice, and he did publish the same things that I speak of. The sweetness of his voice, and language so sweet, that he has won my heart. I never had the least favour from him, and hope I shall never deserve his frown. I find the people well satisfied with his Government.

*Mr. Trevor.* This Bill ought to be committed. Yet there is much fit to be resolved beforehand, which is too big for a Committee. First, to declare his Highness to be the lawful Chief Magistrate. This will not admit of delay. The rest of things may bear their time.

I shall not debate the merits of the title. I shall not urge the arguments we brought in with us. If we doubt whether there was and is a lawful Chief Magistrate, by what authority came we here?

I see gentlemen not willing to take that. Yet we have

occasion thereunto by their great ambition, which wearied and weakened all the country by perpetual war." See "The Historie of the World," (1614,) pp. 72, 266.

either sworn to a thing not in being, or else he is lawful Chief Magistrate. If it be said the acknowledgment is but a form, it is such a form as never Parliament sat without it. When we are gone hence, those that come after us will dispute our authority. It is the wisdom of all Parliaments to provide for peace. The peace of the people should be the main consideration of a Parliament. This is a full free Parliament (some few exceptions against the form, but few, or none, against members) but if we dispute away their right of these things, we shall be neither full nor free.

The worst of princes never wanted recognition. It is at the people's charge, that all Governments are obtained and settled. There was never more need of a prudent and patient Parliament, to fix our peace upon a civil interest. None except against the person. We are content to declare he shall be so; let us declare that he is so. To defer this, is at once to leave the people loose from all authority. The people were lately delivered from this fear on the death of his late Highness.

*Mr. Higgons.* This is the first Parliament that ever I sat in, so that I might be silent; yet the business being of consequence, I shall give you my opinion.

I find most that discourse of Parliament, say of it, that this is such a crisis of time as never was; and that on this depend the happiness and glory of the nation. I hope the prudence will be such that we shall oblige the generations to come.

We have had to combat together about the privileges of our country. I cannot see how the rights of the people or their liberties are endangered or injured by a single person; while the laws give every man what is his own. It is my opinion (what! should I speak of my opinion, when in such a majesty and wisdom?), the wisest men's opinion was for that monarchy, where all innocent men were safe, and nocent punished. Commines,* that French statesman, knew all Governments,

* Phillippe de Commines, Knight, Lord of Argenton, became, in early life, a favourite courtier of Charles Duke of Burgundy, from whom he passed into the service of Louis XI.; in consequence of a degrading, but well-merited affront from the Duke:—

and agreed the monarchy of England to be the most perfect.

"À un retour de chasse, Commines fatigué, s'étant assis, avait poussé la familiarité, ou plutôt le manque de respect, jusqu'à dire à son jeune maitre: *Charles, tirez-moi mes bottes!*; que le Prince en effet les avait tirées en riant; mais qu'en riant aussi, il avait pris une des bottes, et en avait frappé rudement la tête de Commines, qu'était devenu la fable de la cour de Bourgogne." *Nouv. Dict. Hist.* (1789,) iii. 32.

Commines died in 1509, aged 64. He has frequent occasion to mention the Princes and the affairs of England; but I am not aware in what passage of his work he commends, according to this speaker, the perfection of the English Government. Later Frenchmen, especially Voltaire and Montesquieu, have been lavish in its praise, assuming the independence on each other, of the three legislative powers; *Ponderibus librata suis*, according to the motto from Ovid, which De Lolme annexed, in 1774, to his "Constitution de l'Angleterre," taken, with great, but perhaps unconscious propriety, from the Metamorphosis.

These foreigners probably never heard of

"Election, but a market vile
Of slaves self-barter'd;"

or of the manner in which that market is regularly supplied. Yet Mr., now Earl Grey, in 1793, offered to prove, at the bar of the House of Commons, that of the 513 members for England and Wales, 327 were returned by 2611 persons, from among the millions. Of these 327, 92 were *nominated* (besides an extensive influence, and undisguised appointments by the Treasury,) by 91 Commoners; and 88 by 71 Peers, though it is gravely voted in every Parliament, to be a breach of privilege for a Peer to interfere in any elections. See "The State of the Representation, delivered February 9, 1793, to the Society of the Friends of the People, associated for the purpose of obtaining Parliamentary Reform," *passim*.

The *Memoires* of Commines attracted the attention of Elizabeth's principal statesmen, though they appear to have been little familiar with his language. I have now before me a translation, in 1596, dedicated to the Lord Treasurer, Burghley, and of which he had long possessed a copy in manuscript. The following commencement of Thomas Danett, the translator's address, may be worthy of quotation, especially as displaying the apprehensions entertained in "the golden days of good Queen Bess," of admitting the people, "the vulgare sort," behind the scenes, to discover the complicated, if not cumbrous machinery of the political drama:—

"It is now, Right Honorable, thirty yeers since I presented to your Lordship, and the late Earle of Leicester, my Lord and Master, the Historie of *Commines*, rudely translated into our vulgare tongue, the

By princes St. George's cross was planted upon the walls of Jerusalem. By princes were all great achievements.*

which, of later times, at the request of the late Lord Chauncellor, Sir Christopher Hatton, I perused anew, and enlarged with such notes and pedigrees, as seemed necessary, as well for explanation, as (in some few places) for correction of the historie. Since his death, certain gentlemen, to whose hands the booke happened to come, tooke so great pleasure and delight therein, that they determined to put it to the presse. And albeit that I alleaged many reasons, why, in my conceit, bookes of this nature, treating of princes' secrets, were unfit to be published to the vulgare sort, the rather because the author, in some places, seemeth to be of that opinion himself. Yet none of my reasons could prevail; so that, would I, nould I, to the presse the booke must go."

The translator says of his author, "He was of tall stature, faire complexion, and goodly personage. The French tongue he spake perfectly and eloquently, the Italian, Duche, and Spanish, reasonably well. He had read over very diligently all histories written in French, especially of the Remaines, and bare them all in memory. He much acquainted himself with strangers, thereby to increase his knowledge. He had great regard to the spending of his time, and abhorred all idleness. He was of an excellent, yea, incredible memorie; for he often indited at one time to fower secretaries, severall letters of waightie affaires, appertaining to the state, with as great facilitie and readiness, as if he had but one matter in hand; a vertue so rare, that I have not read the like, but of Julius Cæsar and him."

* This speaker might have said as much for Consula. His reference to the story of the Crusades, that marvellous infatuation of princes, priests, and people, was singularly unhappy, as an attempt to recommend the preference of royal government. *Quidquid delirant reges, plectuntur Achivi*, (Kings quarrel, at the people's expense) is a too appropriate motto of almost all history. Hence, it has been well expressed, as a result of the world's experience, that,

"War is a game which, were their subjects wise,
Kings would not play at."

According to *Gibbon*, (ch. lviii.) "July 15, 1099, on a Friday, at three in the afternoon, the day and hour of the passion, Godfrey of Bouillon stood victorious on the walls of Jerusalem." These secular glories of the Cross have been sometimes sanctioned, at least by their phraseology, among men far more enlightened than Crusaders, or, probably, than most of the speakers in Richard's Parliament. Dr. Blair, in a sermon, "On the Death of Christ," when describing the Saviour's consoling foresight of the eventual triumph of his religion, thus eloquently takes up the language of exultation over Jews and Heathens:—

After sixteen hundred years experience of this government by a single person, shall we now go to change? Your great ally, the French, is threatened on every hand. The King of Spain, once on his knees, is now on horseback, by the Austrian family being possessed of the empire.* Let us settle this at home, and we shall carry on our business in Flanders.

*Mr. Chaloner.* When I came first to the door of this House, I made no more doubt that my Lord Protector was the supreme magistrate, than that you sit here; but by what I have heard since I came, that which was clear to me then, is now a doubt. I hear an *interregnum* much spoken of. What doth an *interregnum* signify, but that we are without a government at present, and therefore you are not now to recognize, but to elect; not to declare a Chief Magistrate, but to make one.

Those threatenings from the Dutch, are but tricks. If this had not been brought in, you might have gone a great

"The cross was to shine on palaces and churches, throughout the earth. It was to be assumed as the distinction of the most powerful monarchs, and to wave in the banner of victorious armies, when the memory of Herod and Pilate should be accursed; when Jerusalem should be reduced to ashes, and the Jews be vagabonds over all the world."

Would not a reader imagine, that the glad notes from the "sweet harp of prophecy" had been reversed, and that the kingdom of Christ had become a kingdom of this world. Who does not prefer the language which Milton ascribes to the Saviour, when Satan would urge the persevering pursuit of martial fame? (P. R. iii. 71.)

"They err, who count it glorious to subdue
By conquest far and wide, to over-run
Large countries, and in field great battels win.
But if there be in glory aught of good,
It may by means far different be attain'd
Without ambition, war, or violence;
By deeds of peace, by wisdom eminent."

Godfrey of Bouillon, Duke of Lorrain, was immediately elected King of Jerusalem, by "the Christian Princes, generals, and commanders." The kingdom subsisted till 1162, under five Latin Kings. *Sandys*, in 1611, visited at Jerusalem, the tombs of Godfrey, and the Princes of his race. See *Travels*, (1673,) p. 127.

* See vol. ii. p. 355, *note*.

way in the business of paying your army. The fault is not in the country.

As to the Bill, it is but short. It is not a speech.* It is a Bill. Debate it in parts. I shall address myself to the principal verb, and that is, recognition. It must be handled. It must be touched. There can be no recognition, before a cognition. From whence was that?

1. It is said, from the people, and so testified by the Bill. Where did these people meet? In their collective body, or by representatives? Not in their collective. I know no House, no field, that could contain them.† I value not the addresses, because I know how they were procured. If you should set up a Committee of addresses, as there is of privileges, there would be as many complaints for fasle addresses, as for false elections. The people are only in their representative. I am sure there hath been no recognition yet, by you, who are here the representative body.

2. The Judges affirm it. They sit at Westminster, and they cognize.

I wonder not at this. The long robe will sit and do justice though a tyrant be in the throne. The Judges sat under Richard III., while he suffered them to judge by law.

* Probably an allusion to the long speech of Sir Arthur Haslerigge.

† Such was the language used by a justly celebrated pamphleteer, when sending forth his arrows, even bitter words, against the former Protector:—

"Have not the people of England," says Cromwell's acute and rigorous censor, "much reason to ask the Protector this question: *Quis constituit te virum principem et judicem super nos?* Who made thee a Prince and a judge over us? If God made thee, make it manifest to us: if the people, where did we meet to do it? Who took our subscriptions? To whom deputed we our authority? And when and where did those deputies make the choice?" *Killing no Murder*, (1734), p. 9.

The first appearance of this formidable pamphlet has been noticed, vol. ii. p. 312, *note*. Colonel Edward Sexby, (see vol. i. p. 354, *note*,) before his death in the Tower, January 13, 1657-8, "owned the book called *Killing no Murder*, and said he was still of that judgment." *Mercurius Politicus*, Nos. 398, 399.

3. The Council hath proclaimed him.

They did wisely, to prevent confusion and blood. But, by this objection, you may see the rare affection of a single person, who, when he dies, endangers the peace of a whole nation.

4. We do sit here by this authority, and by that we cognize him.

It is easy to make it appear, that a Parliament called by one that had no authority to call them, yet, being come together, they are a lawful Parliament, and what they do is lawful. Richard III., Henry IV., V., and VI., were all usurpers, and yet their laws were good and unquestionable.

Let no man say, that his Highness is not Lord Protector. I never thought the contrary. I believe he is, and that it may be made out; but it is not yet made out to us, and it is not fit for the representatives of the people to contest they know not what.

Besides, the Bill is not well penned, not in a Parliamentary state. Every secretary must know his master. If I be a secretary to a Lord; to a Lord temporal I ought to write not as to a Lord spiritual. Every secretary ought to write what is to pass a Parliament, not as he writes his mysteries. The style of a Parliament ought to be plain and perspicuous, grave, majestic, and commanding.

The form of the Bill ought to have been thus: "Whereas, by the humble Petition and Advice," and so recite the whole Act, as to the nomination of a successor. Then it should have followed, that "in pursuance of the said Act, the late Lord Protector did nominate and appoint," &c., reciting the manner of his Highness's declaration, naming in whose presence, and that it was under the great seal. This would have been more plain, parliamentary, and full of satisfaction. Let all these things be examined at a Committee.*

* "All this was said because it was verily believed, that the nomination, according to that Act, could very hardly be made out; and if there were any, it was but a puzzled nomination, and that very dark and imperfect." *Goddard MS.* p. 139.

*Mr. Skipwith.* Let it be examined by what authority the ancient constitution was taken away by a handful of the House of Commons.* I would, in the first place, acknowledge his Highness, as is moved. He, we, are called by the law, and chosen so. I know no law to take away the House of Lords.

*Mr. Steward.* In this dilemma, you must either acknowledge this government, or else you will ravel into all that has been done since 47.

Either we have an old government lawfully established, or a new government. The authority that set it up was as lawful as that which took it away. If not lawfully taken away, your debate is at an end. A great many reflections yesterday might have been spared.

I am bound to defend the acts of the last Parliament. I know no force. The interest of the nation never will be stood to so much as they did. I was scandalized at keeping out your members, and absented myself two or three months. You had lost your purse and balance, those you have restored to you by them.

A perpetual law was established by the old Government. Not only now determined as to time, three years; but contracted to half by the quantity, 25,000*l.*† You have now bounded his Highness by the laws of the nation, that he cannot, without violation of the laws and his oath, break in upon your property.

A great weight is in your oath. He is owned by all the people of England. We have all, or the most of us, recognized his Highness in that capacity. We have done it as the people's representatives. If another man authorize me to do an act, it is his act. The single question is, whether we shall all do, what we have severally done. Malice itself cannot fasten on our Supreme Magistrate, and this is something to me of a divine suffrage.

My motion is, that it may pass with all speed.

*Mr. Attorney-General.* I would have all things past, to

* See vol. ii. p. 431, *note* †. † *Per mensem.* See *Ibid.* p. 458, *note.*

pass away. You are now to make laws to settle. Faults have been in all times, and are easily found. If we stand to strict formalities, we must look further back than is meant. The people, I believe, are willing to forgive and forget all. We are now to go on to settlement. The Parliament did still kick off some of the prerogatives which were exorbitant. No man is so unwise, but he will circumscribe the Chief Magistrate. I hope we shall have a concurrence. I have served here many years. I find no man give just exception against the man. Without guile or gall,* was a good expression. I hear of none to remove him, nor in competition with him. Why should not we willingly own him, and cheerfully, against whom there are no exceptions? There has been debate enough. While we stand doubting here, I doubt we shall breed greater doubts in the minds of the nation. Then why should not we declare this as is moved? Else it will breed doubts abroad.

*Mr. Neville.* I wish the questions were regularly before you, that we might speak to them. There are three questions before you.

1. To lay the recognition aside.
2. To commit it, which is proper and regular.
3. To declare a previous vote.

I wish a Bill had been brought in.

It has been said that the Chief Magistrate is King, and that his office is hereditary. If nothing has been done to take away those powers, then Charles Stewart has undoubted right.

I am for a single person, a senate, and a popular assembly; but not in that juggling way. King, Lords, and Commons I cannot like. This man is, at least, actually, if not legally, settled the Chief Magistrate.

As to the objection of fears, never was greater quiet and peace for three months, than when the last Government was in debate, and why should it not be so now.

Since the dissolving the old Government, we have had

* See *supra*, p. 104.

many alterations without success, which hath happened because every Government hath had some flaw in it which hath not yet been seen.

It was not the civil war that altered our Government, but tendencies to the alteration of Government that caused the civil war. It is in your power, as the sovereign power of the nation. *Imperium fundatur in dominatione*, that is an infallible maxim. The people are not like a young heir that hath squeezed wax,* by which being once bound, it is too late after for him to repent. If one have power to do any thing, he may and will do it.

William the Conqueror came in with an intent to seize all the lands. He was only prevented by the privilege of the Church; that saved us. I mean the Church of Rome, not our Church, if we have any.

The Barons got a great share, and having a considerable part of the land, and no part in the Government, they began to stir and ruffle with the King; and in fine got authority, and gave laws both to King and Commons, until King Henry VII.'s time. He designed to weaken the hands of the nobility and their power. But Henry VIII. did more by dissolving many of the abbeys, and distributing their lands among the Commons.

The Commons, till Henry VII., never exercised a negative voice. All depended on the Lords. In that time it would have been hard to have found in this house so many gentlemen of estates. The gentry do not now depend upon the peerage. The balance is in the gentry. They have all the lands.† Now Lords, old or new, must be supported by the people. There is the same reason why the Lords should not have a negative voice, as that the King should not have a negative; to keep up a sovereignty against nature. The people of England will not suffer a negative voice to be in those who have not a

* On a seal and delivery, as his "act and deed."

† "Query whether this equality or almost parity hath not more enforced that argument of late, by distributing King, Queen, Bishops', and delinquents' lands." *Goddard MS.* p. 140.

natural power over them. And for the Militia, that power which was to be employed for the preserving of laws, that was employed against them. No power will acquiesce in the taking away their own power. When we are naturally free, why should we make ourselves slaves artificially?

Let us not return to the Government of the Long Parliament. It was an oligarchy,* detested by all men that love a Commonwealth: so that whosoever lays that upon us, it was not the Government contended for. We that are for a Commonwealth, are for a single person, senate, and popular assembly;† I mean not King, Lords, and Commons. I hope that will never be admitted here. I shall speak to it afterwards.

The Petition and Advice settled power in a prince to have kingly authority over a people. Never think that settling such powers as are not consistent with a free people, can do your business. There will be hauling and pulling, and irregular proceedings: witness many late exorbitances in the Government, of which I will not say you ought to call them to a severe account that have been instrumental; but this I will say, that either you ought to call them to account, or to mend the constitution, so as there may be no danger for the future. It will be in vain to recognize any body, till you have provided for the liberty of the people.

I shall move that this Bill be laid aside, and to declare the Protector to be Chief Magistrate. He is the fittest person of any man in England. I would have him so; but leave it not to Westminster-hall to interpret what is meant by the Chief Magistrate. I could wish he were a magistrate, as supreme as the nation will bear at this day; but I know not what misrepresentations may be made of it.

Your David, that had shed a great deal of blood, was as safe as any man, while you were settling the Government.

* Thus Neville's associate, Harrington, censures the Long Parliament as "an oligarchy, a council without a balance, a parliament consisting of a single assembly." See *Oceana* (1656), p. 49, in Harris's *Lives* (1814,) iii. 321.

† The first exception to the remark, vol. ii. p. 460, *note*.

There is no danger of this pious person. I would have you declare this man to be Chief Magistrate, under such rules and limitations as you shall agree upon. And let this be debated in a Grand Committee.

*Sir William D'Oyley.* I move that he be declared to be Protector, according to the known laws of the nation, and privileges of Parliament.

*Mr. Bodurda.* I shall not be long at this time of day. I can inform the gentleman that there was an Act of Recognition of his Highness in the former Parliament. The House thought fit to postpone it in that case, but the reason is not so in this case. There are two heads.

1. The consequence of the arguments objected.

2. The consequence of the thing laying it aside.

It is proposed not to take for granted the Petition and Advice.

1. Because it was not a free Parliament.

By what law were all public lands sold? Was the Parliament free, or the major part turned out for wranglers, though by the majority of the nation, thought to be as fair gamesters as those within? The Army were sent to, and the Parliament agreed to the reason they gave for keeping them out. I could speak of private Acts, Acts of Oblivion, and divers acts of consequence which will fall by it, if now we go into a Commonwealth. Consider you will find a great part of the lands of the balance in those lands at Goldsmiths'-hall.

The Petition and Advice was made as freely as any law since the beginning of the Long Parliament. Never was property settled better than in that. The 1,300,000*l.** was the hardest article that ever was. It was there asserted to be the undoubted right of the people, that no tax be laid but by their representative.

This House had been full of your enemies. That chair had been filled by those that would have been the Protector as much as any man here.

His Highness may dissolve you, if he please, within this

* See vol. ii. pp. 457, 458, *note* ‡.

hour. If so, then they that come next may do all this. If ever there was an opportunity to settle the nation, certainly now. If there be a breach or rupture now, it will be found that some friends will support the cause. Major-generals may return with a breach in the city and in the country. Consider the consequence of the fact. I got no fish when the waters were troubled.* I have no more privilege but as any commoner by this Government.

Let us clear this business. Some would have it in a Grand Committee. Some would lay it aside. I have heard it said, every man may speak as often and as long as he will. How then shall we in a Committee find out the constitution of Government. If it come to that, I shall speak while I have breath against a Republic.

My motion is for a previous vote, that his Highness is lawful Magistrate, &c.

*Mr. Solicitor-General.* I shall not trouble you with a long speech. The history of the past times is very sad. I hope we shall now look forward. I do agree with those gentlemen† that would have it better worded.

The question lies narrow, whether those words shall stand in the Bill, that his Highness is Lord Protector, &c. that your Committee may build upon that. I am not of their opinion that would have it laid aside. Foreign nations will say, you are debating whether his Highness be Chief Magistrate. What will all people that have owned the Govern-

* This Speaker, probably one of those adherents of Charles Stuart in disguise, described by Dr. Bates and Lord Clarendon, as members of this Parliament, had now a lucrative place, (see vol. ii. p. 433, *note*,) and he put himself into the right road on the Restoration; (see *supra*, p. 110,) when he assisted, by his seemingly willing recollections, to destroy Mr. Justice Cook; "having," as he describes it, "a conveniency out of his house into a gallery, that was some part of it over the Court." There he listened to the King's trial, perhaps even then depending on "the chapter of accidents" to turn his hearing to good account. That sordid lawyer, William Lenthall, unworthy to have been Speaker of the Long Parliament, performed the same ill office for Mr. Scot. See "Tryals of the Regicides," pp. 74, 90.

† See *supra*, p. 130.

ment say? I doubt judges and justices of peace will all be at a stand. I hope we shall not part, till this be resolved, if those words shall stand. I hope there will be no negative.

*Colonel Terrill.* We do but beat the air. It is granted by all that his Highness is Protector, and should be owned as Chief Magistrate. I shall neither defend nor maintain any of the actions done. I shall not depend on the Petition and Advice. We shall do him greater honour to declare him by this House, which will be a most firm foundation. We find him in the place. Let us acknowledge him in the power.

We cannot recognize, without looking back, which I would not do; cognize we may, which looks forward: but whether by the Bill before you, or by any other way, I am indifferent. The question will be, whether we shall take the Bill up at a rebound. I would agree that it might be taken for granted; that the Bill may be committed, granting his Highness to be Protector for life, with some limitation. I am sorry to see that his Highness cannot pass without something else. I am for declaring him Chief Magistrate, but not with what goes along with it,* and which is intended to be received with it, and keep him company.

I would have something put in to bound it. Monarchy unbounded is but supreme tyranny. If nothing go along with it, I am afraid we shall give away all our liberties. Therefore, I would have the Bill committed, with power given to your Committee to add, amend, and expunge.

*Colonel Birch.* Plain dealing is best. There are two ways to destroy a Bill.

1. A Grand Committee.

2. Like a pin in a wall; if you cannot knock it down with an axe, hang so much on it as to break it down.

I am one of those that would not lose the least of the people's liberties. This Bill before you is the best to clear something, and to make way to gain the rest by degrees and in time.

All the time of the war there was no questioning of the

* "Meaning the other House." *Goddard MS.* p. 142.

foundation. I take it to be a man's mind, what he speaks. First and last it was always declared to maintain the rights of the people to three estates. How we came to lose it, the foundation: it was an irresistible necessity. Two parts were turned out of the House; it was a truth. It arose from a thing called an Agreement* and Proposals. When the Jesuits had fought in the field against you, then they got in here. Some were in your Army, dippers and creepers; when that army, once out of the way, went further out of the way. The enemies of our religion brought all this upon us. See what congregations we had in 43, and what now. It is questioned whether we have a Church in England;† questioned, I doubt, whether Scripture or rule of life is in England. I hope I shall be able to answer God and good men, and bad men if they ask me, that what I move is just. We are now resorting to old foundations. Will not those enemies bring us in still new devices? It has been said that Parliament men have desired some time, to know the minds of those that sent us. It would give no satisfaction to tell them we have spent so much time in debating whether we shall have a single person. When I was in the Army, some said, "Let us not go this way, lest the war be ended too soon." I am afraid this is the aim of some here. If you set up hungry bellies, the nation will be starved, before their bellies be filled.

My motion is for the previous vote, and then to refer it to a Committee; but that is too great a power for a Committee. Make it part of the Bill, and put it before you rise.

The question was loudly called for, and the Speaker standing up.

*Colonel Bennet.* Other questions ought to precede, lest by stepping into this question, we do a thing we understand not.

1. As to the Bill itself. We are not of one common understanding in the words of the question.

Some offer, that the Chief Magistrate intended is another

* See *supra*, p. 113, *note* §. † *Ibid*, p. 133.

than in the Petition and Advice. I cannot tell what power he has (I know not his person), or how consistent it is with our liberties. If we are about to do a thing contrary to our understandings, it will not be improper to stay you from the question, till we are better informed. I suppose it is the same we are sworn to at the door.

When I hear such interpretations and glosses upon the oath and the Covenant, which I never expected, I doubt such an interpretation will be put upon this, if we easily pass it. It is meet there should be a recognition singly; but I hope we may stay awhile, and commit it so as to have liberty to debate the parts. That which came first to your hands, let it go first off your hands.

*Mr. Raleigh.* I scarce see one man against the question of a single person; but we resolve not of the person that must accept these conditions. I second what was moved, that we resolve here to recognize a single person to rule over us.

*Mr. Hungerford.* I thought in the morning to have found a long speech. I would have the Bill committed with laying, as a foundation, this proviso, "That his Highness is the lawful and Chief Magistrate, and Lord Protector of the Commonwealth of England."

*Mr. Hewley.* It is a short point to acknowledge: first to settle a being before a well-being: nothing so natural. This single question will settle us all; you may debate the powers afterwards.

*Mr. Swinfen.* What I shall speak, shall only be to ripen the question. This was raised in order to give directions to your Committee, and is matter of great consequence. The subject, his Highness; the act, Recognition. That which we give freely, is quickly done, when freely done by a general assembly, as here. I would not have the question perplexed. The nearer our oath, the nearer the thing. There is nothing in the oath requiring us to inquire into that Act; nor more in this question, but that the House, by a previous vote, make it part of the Bill to recognize his Highness to be the undoubted rightful Lord Protector and Chief Magistrate.

Let the oath be reconciled to your question, and it will pass with unanimity. Now that the question is moved, we cannot go off, without declaring him Protector. I hope you will not include any monies, or other powers.

*Mr. Freeman.* You have here the bodies of three nations before you. All offer to you the diseases, none offer the cures. I cannot add more than what is said of his Highness. We are but to light our candles to the sun. The late Protector was declared Protector without a Parliament. His Highness might have forced us to do what we ought to do; but so much sweetness and goodness. He might have brought an army to your bar, to have forced this.

*Lord Fairfax* took him down, and moved that he be called to the bar, for naming an army to be brought to this bar.

*Mr. Reynolds.* I move that, it being a first offence, he be not called to the bar, but he may well explain.

*Colonel Birch.* He ought not to have taken him down. Haply, he would have explained, if you had let him go on.

*Mr. Attorney-General.* I cannot justify the word. I am sorry it should fall from one of the long robe; but he should be heard out. I may speak a word, and, if you take me at half, you may take me at the worst.

*Sir Anthony Ashley Cooper.* He was gone past explaining. I have never known, but in such a case, he might be taken down.

*Mr. Freeman* explained. Such force has been formerly. I would not justify what is illegal. I desire we may be governed by the laws. I would have his Highness recognized with all the honours; and with this design, that Commons may not kick down crowns, nor crowns Commons. I conclude with Colonel Birch's motion. (It was against the orders of the House to name him.)

*Sir Arthur Haslerigge.* I am exceedingly against this question, and——

*Colonel White* took him down, saying, that he could not speak till a question was propounded.

*Sir Arthur Haslerigge.* I may speak against propounding the question. Though I spoke much yesterday, to the

trouble of the House, I may to this question speak as much more.

*Serjeant Maynard.* I hope the gentleman will not speak so much to the question as was said yesterday; yet to this question, he may speak.

*Captain Baynes.* It was against the orders of the House to name Colonel Birch.

*Sir Arthur Haslerigge.* I hope it shall never be in our thoughts, by a previous vote, to declare this person to be rightful, undoubted Protector, &c., and thus determine the question about the rights of the people. If this pass, you may sit to-day and be dissolved to-morrow. Yet the undoubted right of the people is, for the Parliament not to be dissolved till all their grievances be heard; though the practice has been otherwise.

We must labour to behold the will of God. The Protectorship was granted to the late Protector for life, with power to declare a successor. Shall not we examine this? Now if this was not done, if no successor was declared, if God prevented it, do we think that it becomes us to set up one? It is a setting up what God has pulled down, and planting what God has plucked up. You put us to petition for our liberties.

It is most necessary first to declare the people's rights, the fundamental rights. One Parliament may take into consideration what another has done. Let the Bill be committed.

Were ever such things done in 500 years, as in these last five years, to take the people's monies and liberties by a power without doors? Let us not pass a question that the wisdom of the nation shall say we had not thought on. I perceive the generality is for a single person. I am not satisfied. If the wisdom of the House settle it so, I shall submit. If of God, it will stand; if not, it will wither. I would have the things for the people go hand in hand, that the Chief Magistrate still be accountable.

I have delivered my opinion to you in his fear, God's fear, that we may have a settlement, not to shatter, but to establish; that this little world may give laws to the great

world. We are got free. We may make ourselves slaves if we please. We are going one step to it, by this vote. There is no danger while we sit here. I move now to rise. It is one o'clock.

*Mr. Weaver.* The question called for, ought not to be the question in your hands. The proper question is for commitment of the Bill. A business of greater consequence than every man here is aware of. The question comes not in singly. There is much complicating in it. I am against the Bill wholly, not because it came from a private hand. Yet it had been more honourable if it had moved first from the House. All liberty and power are fundamental in the people.

In 54, the first block then laid in your way was the Recognition at the doors,* and you know what followed. It was then six days contended. Give me leave to offer Judge Hale's† expedient, after debating six days together, that the single person in possession shall be the single person that shall exercise the supreme magistracy of these nations, with such powers, limitations, and qualifications as the Parliament afterwards shall declare. This was proposed, as what would be satisfactory, both within doors and abroad.

A gentleman looked more like a parasite of France,‡ than

* See vol. i. p. 273, *note* †.

† One of the Justices of the Common Bench, and member in that Parliament for the County of Gloucester. Though he had declined to acknowledge Richard's Protectorate by renewing his commission, he was serving in this Parliament for Oxford University.

Bishop Burnet says, inaccurately, that "he lived a private man till the Parliament met that called home the King." It seems that when "the rest of the Judges urged upon him to accept of the new commission, and employed others to press him to accept of it, he rejected all their importunities, and said, 'he could no longer act under such authority.'" Yet, under Richard Lord Protector, he could make laws, though he could not execute them. Such was the correct judgment and consistent decision of this great lawyer, and (as appeared, vol. i. p. 26, *note*) pre-eminent witch-finder." See "The Life and Death of Sir Matthew Hale," (1682) p. 49; *Parl. Hist.* xx. 299, xxi. 253.

‡ Whose "body politick," Dr. Heylin, a contemporary royalist, thus

an Englishman, that said we could not take away the Constitution, nor meddle with the Petition and Advice.*

This expedient will answer all. Commit the rest.

*Mr. Godfrey.* I rise, not to take up your time, but to second that motion, which will draw into consent most of our minds and judgments, and because it had good success when offered by Judge Hales, I hope that expedient will have the same effect now as then; but to pass it generally, leaves fears with me. If passed in the bare terms of the oath, it concludes us. I doubt, you will be bound up to the interpretation of your oath, in the largest sense.

I hope it will not give reason and ground of jealousy, that you pass not this so hastily as is moved you. What is represented to the judgments of this House under care and caution, will not be called jealousy, but your duty and prudence. And there is great reason to cautionate any prejudice that can be upon our rights and liberties, by a general question. There have been great sufferings by the after constructions upon general terms, whether in subscriptions, votes, or oaths. You will, *uno statu*, give all that is granted in the Petition and Advice. That has been urged to you, on the construction of the oath. One constituent power in that oath, the single person, made that use of it. It may, nay, it must, be so construed.

If you shall pass the general question, that he is Supreme Magistrate, and do no more, and rise after your vote, and then be dissolved, all the Judges in Westminster Hall would be bound by that vote. They would judge according to the law in being, the Petition and Advice, for that, *de facto*, is the law. Their work is not to question the power that

describes from personal observation: "The King, in his own conceit boundless and omnipotent, is yet affronted by his nobles: which nobles enjoy all freedom of riches and happiness; the poor peasant, in the meantime, living in drudgery and bondage. The Lord and the King, though otherwise at odds among themselves, be sure to agree in this, the undoing and oppressing the peasant." See "France painted to the Life." (1656) pp. 216, 229.

* Perhaps referring to "Major Beake," *supra*, p. 114.

made it. Therefore I desire that expedient may be added. I aim not at all to divert your question, but to make you more safe. We are not secure, as some move the question, unless something go along with it.

I think your appearance by his writ and call, owns him to be the single person: so that it is not the question, single person, or not single person. That is all at an end. Take caution against all the mischiefs that may follow, if it pass barely, and I shall freely concur with the question. It will put out all jealousies from men's minds, and at the same time, it will put you into a way of settling all things that are for the good of the people.

*Mr. Gott.* I shall not go back to times past, nor look forward to *Oceana's** Platonical Commonwealth; things that are not, and that never shall be. We go about to grasp more, and lose that which we would have. I would have it plainly stated. We have a copy to write by, the oath we have taken. I would not have a debate about saying what we have sworn. His Highness's oath to us is also considerable. These are fundamentals. The last Parliament, though I was excluded,† did pen this with a great deal of care and caution. I would have us do so: neither add nor diminish from the oath. I would have the words of the recognition penned in the words of the oath. As Pilate said, "What I have written, I have written;" so what I have sworn, I have sworn. Our oath has bounded us and him too, to rule according to *lex et consuetudo Angliæ.*

I move to have the question in the very words of the oath.

*Mr.* ———.‡ If you should absolutely make him Lord Protector, you unbend him from that oath, unless you add, that he shall govern according to law.

*Mr. Goodrick* moved to the same purpose.

*Mr. Jenkinson.* To add those qualifications, serves to con-

* See *supra*, p. 134, *note* ‡; *Athen. Oxon.* (1692), ii. 438—441; *Brit. Biog.* (1769), v. 396—398. The *diurnals* of this time frequently refer to the *Oceana*, describing, in a caricature style, the ballot and the rotation.

† See vol. i. p. 262, *note* ‡. ‡ Blank in the MS.

clude that you intend not to qualify the Chief Magistrate in this Bill.

*Lieutenant-general Ludlow.* The term is ambiguous, to rule according to law. I would have you first determine what you mean by law.

The great quarrel between the King and us, was the Militia. Either he or we were guilty. I look on myself as guiltless of that blood. My conscience went along with the Parliament, after the King was brought to justice.

When the interest of the nation was suitable to government by Kings, (but that was when the constitution was another thing than now it is,) the people might live peaceably and be happy under kings. This House of Lords must be a council of war.

I honour his Highness as much as any man that speaks here. It will not appear that they are his best friends that wish this for him. If we take the people's liberties from them, they will scratch them back again. I doubt those gentlemen that contend for the covenant,* are for King, Lords, and Commons. I doubt they would see this man dragged at a horse's tail, and King Charles set up.

I would have things settled for the Protector's honour and safety.† Such as shall desire to settle that upon him, which is not for the interest of the nation, will be injurious to the nation and to him.

*Mr. Bulkeley.* I am called up to defend what I said of the covenant. I did it to invite us to unity and brotherly love.

All is gone when you give this vote, that is comprised in the Petition and Advice. Those powers are so great, that I had rather vote him in as King, upon the terms of former Kings, than give him this that is moved. We are between Scylla and Charybdis. I would not have too little power

* See *supra*, pp. 105, 108, 139.

† With the Lieutenant-General's attachment to a Commonwealth, he probably designed, in this, his first speech, to insinuate that the Protector's "post of honour," was "a private station."

given, nor too great. This does actually give and put a royal construction upon whatever you have, contained in the Petition and Advice. He may deny it. He may die, which I fear more. I would trust him more than any man; but we must not trust that. I would have those gentlemen that think of another government, lay it aside, and only look to the fitting the Government to this single person, making it neither too wide nor too narrow. If it be not a present investiture of him actually with whatever is granted by the Petition and Advice, I wish I could learn it otherwise from the gentlemen of the long robe, if that vote does not add nor comprehend.

I take him not to be a person ambitious of power, but to rule with the love of his people, not to grasp at greatness.

My motion is, for the additional words moved to the question.

*Colonel Matthews.* I hope here is no driving of parties in this House. I am confident it is not his Highness's aim to grasp power, to the swallowing up the people's liberties. I am for what is offered. I would not substract any thing that is just for the Lord Protector to have, that he may see our desire to set him upon a clear foundation.

I move for the additional words to the question.

*Sir Arthur Haslerigge* moved for opening the windows for the safety of the House.

*Captain Baynes.* I wonder what is the necessity for this previous vote. We are returned to the law of nature. It is said in the Bill the people have all acknowledged him. I thought the people had been only here. Either he is so, or he is not so. If so, there is no necessity for this House declaring him so. If not, there is need of some consideration.

The Bill makes it hereditary. Where it speaks of successor, it mentions nothing of the Petition and Advice. It is fit you should be satisfied whether he be so. It should be made out. It makes him Supreme Magistrate, and gives him as great a power as ever King of England had. I would know what the words mean, if it give him not the executive and legislative power as fully as any King. Consider whether

you do not put yourselves out of a capacity of recalling your liberties, by this step. First, you settle a monarch; one estate before the other two.

I hope the gentlemen in the Other House, that have fought against the negative voice, and for the militia, and got their estates by it, will not now turn contrary. I said, indeed,* four of them would not balance two knights. I will explain this. There are forty knights in this House, that represent more than the property of all the Other House. The House of Lords, heretofore, could draw to the field half the nation. They had great dependencies. They had a foundation, a propriety, which was sufficient to support a third estate. The old Lords did stand in balance by their propriety.

We are not at the root and bottom of our business. The first thing is, to see the materials. All government is built upon propriety, else the poor must rule it. All nations are so. Let us therefore consider things before persons.† It was said, Moses was a king. You will find he was not so. The Jewish commonwealth was founded in propriety; and for fear of swallowing it up, and lest that Commonwealth should turn to a change, the year of Jubilee was appointed,

* See *supra*, p. 31, where the MS. must have been incorrect.

† See *supra*, p. 75, *note*. "Government is built upon propriety," therefore "lands, leases, or goods," should be represented, rather than the people, or as Sir William Jones well described them, "what constitutes a state." This assumption, generally admitted in modern republics, readily sustained that system of slavery, the will of the few, at the expense of the many, which universally prevailed, whatever may have been fabled by historians, orators, and poets, in the miscalled free-states of antiquity.

There had, indeed, been no republic that at all deserved the name, before the Anglo-Americans vindicated their independence. Nor can even their democracy become a worthy example till they are rescued from the foul reproach of negro-bondage. An American patriot, signing a declaration of independence with one hand, and with the other brandishing his whip over a gang of "poor Blackamoors, used," according to an early observer, "but as for horses or oxen;" (See *Oriental Herald* (1827) xiii. 547) was a picture indignantly presented to the revolting colonists, half a century ago, by the pen of Thomas Day.

that all lands should be restored, to balance proprieties. The Lacedæmonian Government was founded on propriety.

The constitution of King, Lords, and Commons, can never be suitable to this nation, as now constituted.

When the Lords were not able to maintain themselves, some of them truckled under the King, some under the Parliament, as they could shift; and by late experience, what a screen and complete balance were the Lords between the King and the people? Do all that they could, the King, and themselves to boot, were most of them broken in pieces under the Commons.

The people were too hard for the King in property; and then in arms too hard for him. We must either lay the foundation in property, or else it will not stand. Property, generally, is now with the people; the government, therefore, must be there.

If you make a single person, he must be a servant, and not a lord; *major singulis, minor omnibus.* If you can find a House of Lords to balance property, do it. Else, let a senate be chosen by the election of the people,* on the same account. There must be a balance.†

* The first hint I have observed, of the modern wise provision for the practical utility of a republican government. See vol. ii. p. 460 *note.*

† This balance Blackstone professed to have discovered, in "three distinct powers," which, as though he had never seen a Treasury-bench, he ventured to represent as "totally independent of each other." Besides a royal executive, with a *veto* at mere pleasure, there is "an aristocratical assembly of persons, selected for their piety, their wisdom, their valour, or their property." There is also "a kind of democracy, chosen by the people from among themselves."

The construction of this "kind of democracy" has been described, on good authority, *supra*, p. 126, *note.* I have just observed a confirmation, in a very recent debate (May 8,) when it was stated, by a member for Penryn, without provoking the least contradiction, "that out of the 658 members sent to the House, only 171 were sent by the people."

Lord Lyttleton, in his *Persian Letters*, (1735) to which Dr. Johnson very naturally imputes a "headstrong ardour for liberty," makes Selim, in London, thus instruct Mirza, at Ispahan: "The House of Commons is the representative of the nation; nevertheless, there are many great

*Sir Henry Vane.** I rise not to trouble you at this time. Either adjourn for an hour, or till to-morrow. The more you see into it, the more you will see, when you come to embowel it. I hope you will take care not to be surprized.

*Sir Arthur Haslerigge.* I move to adjourn till to-morrow morning.

*Mr. Reynell.* I move to adjourn. There are many gentlemen to speak, and much to be said, both in relation to yourselves and the supreme magistrate.

*Mr. Grove.* I move that you adjourn till to-morrow, and limit men from long speeches, and that those that have spoken may speak no more.

*Mr. Reynolds.* I believe, if that honourable gentleman † that brought in the Bill, were here, he would move for the additional words; but for the honour of your House, I would have you not to pop off the question; but do it unanimously, and in a full House.

*Serjeant Maynard.* By giving the Chief Magistrate this title, you determine nothing about the legislative, which was never in the King. Only the executive power is in question.

I would have no surprize to any, but would have it worded according to every man's conscience. I would have the question divided; for, if put generally, you will conclude some

towns, which send no deputies thither, and many hamlets almost uninhabited, that have a right of sending two. Several members have never seen their electors. All the electors swear not to *sell* their voices, yet many of the candidates are undone by the expense of *buying* them." *Letter* 7. Again. "The majority of the representative body is chosen, not by the whole nation, but by a small and very mean part of it. There are a number of boroughs, which have at present no other trade than sending members to Parliament." *Ibid.* 53.

While the popular influence in the representation is so small, the local influence of property is remarkably disproportioned. In 1794, "the majority of the House of Commons," for England and Wales, was computed to be "chosen by less than eight thousand, out of eight millions." At the same time, Cornwall returned forty-four members, and contributed eight parts to the land-tax; while Middlesex contributed eighty parts and returned only eight members.

* His first appearance.

† Secretary Thurloe.

men's votes. I am against the adding those words in this question. It does imply a negative, *quoad nos.* You engage yourselves by a vote. The Bill has no life nor being till all be agreed on. It signifies nothing, till the Bill be passed. I would think of judges very ill, that should judge laws in fact. I would have you divide the question.

*Mr. Attorney-general.* Propound the whole question, and, lest any should be surprized, let the last be first.

*Sir Henry Vane.* There is much to be said to the whole matter, before a question is propounded. You will surprize men that have not spoken to it. It becomes not the gravity of this House.

*Mr. Bulkeley.* Rather than dissatisfy that worthy gentleman, let him be heard speak first; and then state your question.

*Mr. Wharton.* I move to propose the question; and then put the question, whether that shall be the question to-morrow.

*Mr. Danvers.* Many gentlemen are to speak. I would not have us limited.

*Colonel Terrill.* I would have no man suspected to speak the things over again, that have been spoken. It is against the orders of the House, to limit us to a question. Let us spend to-morrow, and then limit us to the question.

*Mr. Barton.* To a business of this nature, I come as rawly as ever. You are not come so near a question. I do not know but I may speak to it, and many gentlemen that want strength. Let us not suppose that disingenuity, that any man will speak over again. It is against a fundamental order that any man should have his liberty of speech taken from him.

*Mr. Bulkeley.* Unless it be to provoke obstructions from abroad, I wonder why it should be so striven for, to delay it, and spin out the debate with long speeches.

*Sir Anthony Ashley Cooper.* I would have us adjourn. I shall not speak much, nor can speak much to the purpose; but I desire not to hinder any man to speak.

*Sir William Wheeler.* In such cases men were never suffered to speak over again.

*Mr. Reynolds.* It is against a fundamental order to limit any man as to speaking. I never heard so prudent and grave a debate as has been for two days together.

*Serjeant Maynard.* If that gentleman had spoken this in another place, he should have been called to another place; for it is no such thing as a fundamental order of the House. There is nothing so usual, as to tie men up from speaking the same things over again.

The House rose at four of the clock, without agreeing upon any question to be taken up to-morrow; only adjourned the debate till to-morrow, and nothing to intervene.*

* The following passages are from letters to Lord Henry Cromwell, Lord Lieutenant of Ireland. They serve to show the expectations which had been raised, and the delays now experienced, in the attempt to procure a parliamentary recognition of Richard's Protectorate. The last short passage from one of Oliver's silent Lords, sufficiently discovers the difficulty of procuring from the Commons an acknowledgment of the other House.

Dr. Clarges. "London, Feb. 1. 1658-9. On Monday next there will be a tuffe debate upon the second reading of the recognition; but there is no danger. I dare not particularize persons to your excellency; but when you know Sir Arthur Haslerigge, Lord Lambert, Mr. Scot, Lieutenant-General Ludlow, and Captaine Baynes, are of the Parliament, I shall not need to enumerate the rest." See "Thurloe State Papers," (1742) vii. 605.

"Feb. 8. I am not yet able, by the best observation I can make, to tell your lordship how things will go in this Parliament. We have many men of excellent parts, and several judgments, both in politics and religion; but those that are for a national church seem to be the greatest number.

"The Act of Recognition of his Highness's right and title, &c. was yesterday read a second time, and that day and this has been debated without any resolution, and to-morrow morning the debate is to be resumed, and nothing to intervene.

"I perceive a great (I think I may say the greatest) sense of the House is with it; but those that oppose are able speakers, which makes the considerations long before they come to a question. I do not observe any that can object anything against his Highness's person. Those that have been sharp, and have seemed to doubt of his due nomination

The Committee of Privileges sat in the Star Chamber, Serjeant Waller in the chair, upon the business of Colchester, between Maidstone, Barrington, and Shaw. Counsel were heard on both sides.

The Committee for ministers in Wales sat in the Exchequer Chamber, Serjeant Seys in the chair. Our Sub-Committee for approving and ejecting ministers met there, and adjourned to the Speaker's Chamber, and thence, till tomorrow afternoon, for want of a Committee.

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*Wednesday, February* 9, 1658-9.

The members stayed till nine for the Speaker's coming. After that he came, and Mr. Cooper prayed.

The House resumed the debate adjourned yesterday, upon the Bill for Recognition of his Highness, &c.

*Mr. Neville.* I would not hinder your business for a world. There are some petitioners at the door. All have honest, old faces. I desire they may be called in.

*Mr. Knightley.* Till your House be full, turn not your face on any petitioners. If it be good, take it. If you like it not, let it alone.

*Mr. Weaver.* I move that the petitioners be called in.

to the succession, yet concluded to approve it. Others have glanced at the establishing a Commonwealth, to consist of a single person, a senate, and the people; but nothing of this kind has been gratefully received." *Ibid*, pp. 609, 610.

Secretary Thurlow. "Feb. 8. This is the 13th day since the Parliament met, and they have made very little progresse in any businesse yet.

"Since their meeting, this day sennight, was brought in a recognition of his Highness to be Protector and lawful Chief Magistrate of this Commonwealth. It had a good reception, but finds now very much difficulty upon several accounts. The greatest is, lest by recognising him, they should acknowledge the humble Petition and Advice, which many seem much averse to." *Ibid*, p. 609.

Lord Fleetwood, "Feb. 8. We are very silent in our House, and little probability that we shall be owned." *Ibid.*

*Captain Baynes.* I am glad to see the people in love with their representative again. It was never denied to call in petitioners.

*Sir Henry Vane.* The people were never denied to petition. I leave it with you if Whitehall give any discouragement to petition. The addresses,* I suppose, are received.

*Mr. Bacon, Mr. Starkey,* and *Mr. Pedley* moved, that it was against the order of the House, to let any thing intervene, and no man could speak against it without leave.

*Sir William Wheeler.* I apprehend not that the petition is of such consequence as to obstruct so great a business as is before you. This may hold all day.

* "Sept. 25, 1658," says *Whitlock,* "several addresses came to the new Protector, declaring satisfaction in his succession, and resolution to adhere to him." *Memorials* (1732) p. 675.

"Richard," says *De Foe* (see *Biog. Brit.* v. 63.) "had his addresses as well as his father, and in a far greater number; the custom prevailing more and more, daily."

Among these was "an address from General Monk and his Officers in Scotland." This was followed, after the interval of a few months, by "a very long address" to the restored Long Parliament, "so full of cant and republican principles, that nobody could have imagined Monk had wit enough to have played the hypocrite so well;" for, "at the same time, Dr. Clarges, General Monk's brother-in-law, was negociating with him the King's return;" and "in a speech to that Parliament, even when his treaty with the King was agreed upon, Monk desired that no Cavalier might have any share of the civil and military power.

"When Richard was to remove from his palace of Whitehall, and the household goods were packed up, the *quondam* Protector ordered his servants to be particularly careful of two old trunks which were deposited in his wardrobe. The men wondered why he was so solicitous for their preservation, since, by their appearance, and the place they were put in, they did not seem to contain a treasure of such consequence; and one of his friends, hearing him enquire after them with much more concern than for any other part of the lumber, asked him what was in them that made him value them so much. 'Why, no less,' says Richard, 'than the lives and fortunes of all the good people of England.' It seems the addresses that had been presented him were thrown in there; and we all know it is a poor address that has not *lives and fortunes* in it." See "The History of Addresses. By one very near akin to the Author of the Tale of a Tub." (1709) pp. 6—10.

*Mr. Scot.* Petitions were never denied, and you will spend more time in debating whether it shall be read or no, than you would do, if you should read it.

*Mr. Steward.* Nothing can come in of more consequence than is before you. I would have another day appointed for hearing the petition.

*Colonel Okey.* I move to have the petition taken in. I am glad the people do own their representative. It was once very desirable.

*Mr. Hoskins.* I am against the reading of the Petition, as against the orders of the House.

*Colonel* ———*. If those gentlemen † go away without seeing your faces, it will discourage abroad.

*Mr. Knightley.* The gentleman has moved for reading it; yet the sense of the House being against it, I would have two or three gentlemen go out and acquaint the petitioners, that as soon as ever this debate is over, they shall be called in.

*Colonel Gorges.* There is no exception against the petition, but against the timing of it. At this rate, if you break in upon your orders, you shall be interrupted every hour.

*Lord Lambert* moved to have the petitioners called in presently. He made a long speech.

*Colonel Allured* seconded the motion, that the petitioners be called in, and a day appointed for reading of it.

*Mr. Disbrowe.* Nothing can be of greater concernment than what is before you. The eyes of all nations are upon you, to see what you will do concerning the owning your Chief Magistrate. I would have nothing come in the balance with it. Because three or four are waiting at the door, should you put off a business of this nature, of greatest concernment?

*Lord Falkland.* I move, that two or three members be sent out to acquaint them that the petition shall be read, as soon as the great business is over.

* Blank in the MS.

† "Some gentlemen of good affections to the Commonwealth." *Journals.*

*Mr. Danby.* I move, that it be referred to the Committee of Grievances, which sits this day.

*Sir Walter Earle.* I have no skill in physiognomy. It matters not to me that they are old faces.* I second Mr. Knightley's motion.

Ordered, that Sir Walter Earle, Mr. Knightley, and Colonel Gorges acquaint the petitioners, that as soon as ever the great business is over, their petition shall be read, and the said members went out accordingly. It seems they were well satisfied.

The orders of the day were read, and the question on the Bill of Recognition, called for.

*Mr. Speaker.* The debate of yesterday was not reduceable to a question. The proper question is, if this Bill shall be committed.

*Colonel Kenrick.* The Bill stands in need of commitment. There have been various debates upon it.

1. The debate seems to invalidate what was done in the Long Parliament, to validate and advance what is before you. I own no spiritual nor outward liberty, but from the Long Parliament.

2. It is told us, that we have taken an oath at the door; by which we cannot clearly understand the Chief Magistrate's power, whether he assume it, as his father did, or has it from the Instrument, or that this Parliament should give it him. It is fit our oath should be understood. I see no reason, but as those gentlemen took away the Government from the Instrument, so we may take it away now from the Petition and Advice.

It is said, that the Petition and Advice came in by better authority. But whoso considers the last Protector's speech, will find he thought he had as good authority, by the Instrument of Government, and as many witnesses for it, as this can have. I am sure he said, no prince in Christendom had a better title than he had. Therefore, I hope we

* See *supra*, p. 152.

shall not be hurried on, to take us off, before we know where we are.

The matter is, the investing of a power in the Chief Magistrate. I would gladly know, what the office of this Chief Magistrate doth imply; what is involved in it. I would have it understood, whether the House of Lords shall be appurtenances to this Chief Magistrate; whether the militia, negative voice, and an uncontrolable power, shall go along with it. Your learned counsel were taken from the bar, when pleading for your liberties.* If the power of thus sending gentlemen to prison, or the prerogative of these things go along with the office, then I look upon it as the King's cause, and the maintenance of his quarrel.

So far from giving my voice clearly to this business, till these things be cleared up, I had rather lie in Newgate till God deliver us.

I desire it may be committed, that we may certainly know what we give.

It is between you and the Chief Magistrate now, as between a widow and her servant that go to be married. The man will offer all things very fair; but unless she make all things sure before marriage, when he is married, he will tell her then, that all is his by virtue of his office.

*Colonel Gorges.* I never rise to speak without great fear. I never heard it declared that you fought against King, Lords, and Commons.

If Hannibal be *ad portas*,† it is not to fright you but to excise you. It is an ill doctrine that promissory oaths bind, as that gentleman says. If promissory oaths cannot be dispensed with, we are in a sad condition. Oaths are assertory, or promissory. If I swear I see you in the chair, and do not, I swear amiss; but if I swear I will see you there to-morrow, that is subject to a condition and limitation, that is, if it please God to send me strength, or the like.

I shall give my ready consent to the single person and a House of Lords. The more checks, the better the Constitu-

* See *supra*, p. 104, *note*. † See *ibid.* p. 111.

tion. You are not ripe to determine what you will have the other House. What the Long Parliament was, for reasons of state I shall not say. It was for interest. I would have no reflexions on the Lord Protector. I would have them quietly to lie in their graves. I hope they shall never rise again.

I never read of a Commonwealth able to stand without war. A general may make himself chief, when he pleases. Venice* is beholden for their quiet to their situation. It was ill said of a sober person: "a French parasite."† Those that are for Commonwealth, are but to bring us into confusion.

I know not what is meant by your restrictions. I would not give away a tittle of your right. If thus you qualify it, the question will be whether the Protector shall be Protector, till you have agreed on the limitations. The militia naturally goes with the legislature. Every sheriff and county has it. Our ancestors never disputed it. The negative voice

* The late Bishop Watson has recorded an unfavourable opinion of republics given by George III. on the appearance, at Court, of the Venetian ambassador. It is not surprising that a monarch, "served with adoration and kneeling," (as Sir Thomas Smith describes the "honour and reverence done to the prince,") could not discern the excellence of a republic. Yet the Bishop, lingering at Llandaff, though never "loth to depart," when he represented to royalty, that "a republic" was "one of the worst governments in the world," knew, as well as Dr. Robertson, that the republic of Venice was "a rigid and partial aristocracy, which lodges all power in the hands of a few members of the community, while it degrades and oppresses the rest;" and that there had been no proper republic prior to the American. See "Anecdotes of the Life of Bishop Watson, by himself," 8vo. i. 314.

Mr. Thomas Cooper, on "Dr. Priestley's Political Works and Opinions," observes, that "America has begun upon the maxim that society is instituted not for the governors, but the governed; that the interest of the few shall, in all cases, give way to the many; and that entrusted authority shall be liable to frequent and periodical recals."

He adds: "It is in America alone, that the sovereignty of the people is more than a mere theory. It is here that the characteristic of that theory is displayed in written constitutions. I throw out of consideration the ancient as well as the modern communities, ignorantly called republics. There has been no republic, ancient or modern, until the American." See "Memoirs of Dr. Joseph Priestley," (1806) p. 357.

† See *supra*, p. 142.

was never denied the Chief Magistrate, only he was bound to deny no law that was offered from the people.* What is exorbitant in the Petition and Advice, I would have it amended.

*Mr. Stephens.* Here has been much said on a Parliament that was too much on the part of pulling down. They were at last pulled down themselves. I was of that Parliament. I hope, I am now of a Parliament that will be as much for building up. I was never of that opinion, that a minor part should supplant a major part by force or fraud. *Non necesse est, vivere, est, bene vivere,* and *via recta est via tuta.* I have observed that a packing of Parliament, or a packing in Parliament, can never have good success. *De malo quæritis, non gaudet tertio Hæres.* The Act of the Parliament, 21 *Rich.* II. was repealed by 1 *Hen.* IV. The Parliament 1 *Mariæ,* established the Pope's power and authority, as a string when strained too high at last breaks. It did so in the hands of all kings. It did so in a Parliament. So it may be in a Protector. I am for the constitution we lived under; for building up the ancient fabric.

1. Because we lived peaceably under it for many years, and the nation prospered.

2. Because the nature of the people doth best agree with it.

I am for building up that structure, but not with untempered mortar: never with flattery and fear.

The noble person that we find in the Government, I know him not; but the character of him, abroad, and here. He has much gained the affection of the people. Not such an one to be had, none so deserving. Not that I am ready to give away my liberty.

The question is only executory, not declarative; only as a direction to your Committee. I would have you go to the

* If this speaker be here correctly reported, it is difficult to understand what he means by such a limitation of "the negative voice." It would leave a very scanty prerogative to "the Chief Magistrate." See vol. ii. p. 451, *note* §.

question as you have propounded it, with the limitations and restrictions, &c.

*Major-General Packer.* I am very unable to utter my thoughts, so as to contribute to the great work that lies before you.

I am one among many others, that were guilty of the errors of these latter times, and of the irruptions of the privileges of this House; for which I humbly ask you forgiveness. I was led into this mistake upon a double consideration.

1. Being made to believe that the great work of reformation was not likely to be carried on in this House; or otherwise than by contracting the power into one hand, especially such an one as we had fixed upon. I confess, like a sick man, I have been driven and tossed from bed to board; but now I am heartily glad we are returned into this way; that necessity has brought us back to the same opportunity of reformation.

2. An apprehension I had, never to get liberty or freedom of conscience from this House; but I have been ready to check myself often since, considering all liberty of this kind hath originally flown from hence. I confess, I have a little need of some indulgence in that point. I hope I am on the great foundation of religion, the same with all. I have seen, of late, that those good people of this nation, that are desirous of liberty of conscience, are now more willing to ask liberty at your doors than any where else. I am one of those. The good people that have feared your severity in that point, are now willing to seek it here. I hope the two great interests of religious and civil liberty shall never be parted. It has been an observation in this election, to bring those good men in here again, that were for good men's liberty. I say it to my shame, I have been one of those that have opposed some of those liberties. But to the point in hand:—

This is a Bill of very great weight. I admire that the persons that brought it in, being men of integrity, should be

so pressing, to have it pass so speedily. I have exceptions to the particulars of the Bill.

I. To recognize his right and title. This implies an establishment, a right already. I am afraid that word carried too much in the late Petition and Advice. I beg your pardon if I say amiss. I am sorry it should be driven on in so preposterous a manner. It hath been said, that it* is next the Gospel, a thing inviolable; and so, unnecessary to subject it to the approbation of this House. There could nothing be said more of a Government, than was said of the Instrument. I was of that House; and, by reason of my relation, I had such an obligation to that person, who, I hope, is now in heaven, that it was expected I was bound to be thorough-paced in every thing.

There was a clause in the Instrument of Government, at which I could not but rejoice; a clause to qualify the members, which the last Parliament did rather enlarge than straiten. The qualifications in the Petition and Advice, were very considerable: "men fearing God, and of integrity." When persons speak words in one sense now, and after interpret them in another, it should make us cautious what we should do. Those very words were interpreted, that those only were men of integrity that should comply with that Government. One hundred were kept out,† upon straining that word.

This Parliament went on very successfully: as many good men and good things on the whole, as ever were in any Parliament. Suddenly and unexpectedly, one that is now dead, Major-General Jephson,‡ made a motion to break in upon this. After this, a gentleman came with a paper in his hand.§ He is now in the other House, and well deserved to be. He said he had found by Providence, a paper; I know not where. The poor gentleman was tossed from place to place, down almost as far as the bar, and then he was

* The Petition and Advice.

† See vol. i. p. 262, *note* ‡.

‡ See vol. ii. p. 141, *note*.

§ See vol. i. p. 378.

brought up again. Providence ordered it so, as brought him to his place, near the chair.

Some gentlemen spoke twenty times a day, posting all, like the formality of a Bill. At length, it must be done. It could not be done by way of Act. That expects too great deliberation. Therefore, it must be done by the readiest way, by way of Petition and Advice. Necessity drives it on. It must pass. I saw the Bill before it came in. It was for making King, Lords, and Commons; and it prayed the Protector to assume kingly government. It was an ill precedent, that it was not in the power of the Parliament to give, but he must assume.

I concur that the gentleman deserves the government as well as any man in the world, but I would have him settled upon a better foundation; against which there is no just exception.

II. As to the body of the Bill, "Whereas his Highness became Protector by the death of his father." A strange expression, Sir. He did not do so. He became so, if he be so at all, by the Petition and Advice, by the declaration or nomination of his father, or a proclamation from the Council. He became so "by the death of his father!" This is, tacitly, to admit his title hereditary. Why so did King Charles on the death of King James; and this brings in hereditary government by a side wind. I believe, for all that, he would be glad of your sanction or establishment.

Oh! but he had many addresses, and he would magnify his office. I would not lay much stress on the addresses. If the King of Scots had landed at Dover, and had a force, he might have had as many addresses, and by another sort of people. Such are easily obtained.* The people are like a

* See *supra*, p. 153, *note*. The following statement is by a contemporary, an undisguised and virulent impugner of every power in possession during the *interregnum*.

"Richard Cromwell ascends the throne, being but a private gentleman of Hampshire, invited thereunto and encouraged by Fleetwood, Desbrow, Sydenham, the two Joness, Thurloe and others, the relations and confidants of his father. His first work is to take care for his fa-

flock of sheep. I shall not here insist upon the horrid and intolerable flatteries in most of them. I commend the dis-

ther's funeral: which solemnity past, by the contrivance of the new courtiers, congratulations are sent (prepared at Whitehall) from most of the counties, cities, and chief towns of England, Scotland, and Ireland, with engagements to live and die with him: addresses from the independent churches, by Mr. Goodwin [see *supra*, p. 1,] and Nye, their metropolitans; and he was, indeed, worshipped by many as the rising sun in our horizon." See "The History of Independency, the fourth and last part. By T. M. Esquire, a Lover of his King and Country." (1660) p. 32.

T. M., like the worshippers of Richard's short-lived ascendancy, also discovered a luminary in a prince at whose birth, according to *Perinchief*, "Heaven was liberal, kindling another fire more than ordinary, making a star to be seen the same day at noon." On this tale thus sings the servile, and here (as if his genius were debased by his subject) the unusually prosaic Muse of *Waller*:—

"His thoughts rise higher, when he does reflect
On what the world may from that star expect,
Which at his birth appeared, to let us see
Day for his sake could with the night agree."

T. M. says to his "most dread Soveraign," while venturing "to intrude" into his presence, "I know so great a sun will quickly dazzle my weak eyes;" and he proceeds "to pray" for him "the age of Methuselah." But the previous page may be worthy of quotation, as a royal curiosity, preserved in a book now no longer very common:—

"To the sacred Majesty of Great Britain's Monarch, (the triumphant son of a most glorious father, who was, in all things, more than Conqueror) the illustrious offspring of a royal train of antient princes, CHARLES, the second of that name, intituled PIOUS, by the sole providence of an Almighty hand, of England, Scotland, France, and Ireland, King, Defender of the Faith; Restorer of the English Church unto its pristine state and glory; Patron of law and liberty; not to be seconded by any but himself, who is *the best of kings*, and of all vertue to the world the GRAND EXEMPLAR."

T. M. was soon worthily followed by Waller, Dryden, Spratt, and others, in the style of adulation which they had cultivated by complimentary addresses to the Protectoral House of Cromwell. But there is one extraordinary passage addressed by an Academic to the restored Stuart at the close of his reign, when his character was no longer the subject of expectation, but had become the theme of history. I refer to an "Epistle Dedicatory" to Archbishop Sancroft, prefixed to "Plutarch's Morals," in 1684, by "Mr. Morgan, of St. John's College in Oxford," one of the learned translators. On the royal appointment of the

cretion of the *Intelligencer*, that has husbanded them so well as to have our allowance for every week, and not yet to have done with them. But the blasphemies in them are intolerable. Naylor was committed and whipped for lesser blasphemies than those in the book. I shall for example sake propound them to the Committee for Religion, that there they may receive discountenance and a check.*

Archbishop (of which see *supra*, p. 67,) the dedicator thus pourtrays the character of Charles II :—

"A wise and discerning prince, who hath the quickest eye to find out a transcendent worth, and the most generous temper to reward it; a prince who hath the goodness of Trajan's and the wit of all Augustus his reign: the image of the Deity is so closely impressed upon him, that the idea comes very near the original!"

To the *apotheosis* immediately succeeds a *bathos*, "and the accomplishments of body and mind, make him the best and most agreeable of mankind."

* "The book" to which this speaker refers, was probably the *Diurnal*, whose diligent periodical catering for the intellectual palates of his readers, he had just commended. There was another book, now before me, of this date, which appears to have attracted censure, even "when lying in its first bed, and loose sheets in the print-house." It is entitled, "Historie and Policie Reviewed, in the Heroic Transactions of his most serene Highness, Oliver, late Lord Protector; from his cradle to his tomb; declaring his steps to princely perfection, as they are drawn in lively parallels to the ascents of the great Patriarch Moses, in thirty degrees to the height of honour. By H. D. Esq."

H. Dawbeny had "been conversant in the courts of some great princes, and particularly known to many of their persons." Yet, so far from having incurred "the imputation of flattery," which he "ever abhorred," he had "been always most severely taxt of too much of the other extreme." Of this "little history," he modestly declares, that, "to give it the due dresse and ornament of language, would have required no less than the pen of a seraphim." This history, he now dedicates "To the most serene Highness of Richard, by the grace of God, Lord Protector; *Chara Dei soboles, magnum Jovis incrementum*," which, "though it be a piece of an *Æneid*," and "some will think of flattery, yet it is very manifestly" his "most serene Highness his birth-right, and plain prophetic truth." In the same style of verity, he thus proceeds:—

"Your most serene Highnesse is known to hold so much of the vertue of your most renowned father in you, as to be better pleased to meet with an enemy in open field, than a flattering friend in your Privy Chamber, insomuch that I am afraid to tell your Highnesse some no-

I perceive there is a great design to settle things in a hurry. To that end we are affrighted with dangers from Holland. But, thanks be to God! London Bridge is between us. You may sit here two or three months without danger of the Dutch. I wonder that was not used as an argument when the Long Parliament was dissolved. I ask your pardon for it. The seamen minded not who was at their backs, but who went before. A more honourable war was never undertaken than that with the Dutch, and yet, in the midst of that war, that House was broken.*

After, the little Parliament was dissolved, when that very affair was in hand. Yet that Parliament then was dissolved, and the war went on. I wish that peace, when it was concluded, had not been made upon very carnal and bad grounds. There was an interregnum for a month.

I wish your Bill had been a Bill of Recognition for the Army; forty weeks pay behind, as I am informed. This had been a good argument, if it had been to recognize the soldiers, and to move for something of relief for them. I do not think the recognizing the Protector will sink one Holland ship, or affright one enemy. Your men and monies must do it.

There is no need of a previous vote. This previous vote will hereafter come into the Bill, and will work in time. Let

torious truths; how all we, your people, look upon you as our second Joshua, in the place of our second Moses, as full of the spirit of wisdom, courage, and piety, as he was: and that we cannot at all doubt but your successes will be likewise most proportionable to his; how walls and cities shall fall before you, gyants wax pale, rivers retire back, the sun itself stand still, and as many kings will undergoe your yoke.

"I am afraid to tell you, Sir, how we, that are your people, are all of us employ'd in planting more bayes and laurel in our gardens, to engarland your victorious browes, before you come to a battle. In fine, I am afraid to tell you, how all our hearts, like roses withered upon the death of your glorious father, now begin again to bloom afresh, and newly to open ourselves at the benigne, gentle, and glorious princely aspect of your most serene Highnesse." *Historie and Policie.* (1659.) See "The Epistle Dedicatory."

* See *supra*, pp. 63, 64, *note*, 111, 112.

us not, as we have done, play an after game. The importunity of passing it so hastily, makes me jealous. Experience tells me it is contrary to what wise men do. Oh! but the Protector is a good man! What should we fear? Give us good laws rather than good men. I will trust more to good laws than to the best men. These are snares. We had a good man before; we all thought so: but he had his temptations. God hath left it upon record that he did not answer all the trust that was put in him.

A good man had a loving child, and this good man would settle all upon this loving child. A year after we find this good man sitting in the chimney corner. Every thing then sets off the love of the child; if he give him but a pittance for a pound, he is a good child. But when I settle my estate upon my child, though never so good, he shall take my estate with a schedule; a plain bargain annexed unto it.

It best becomes a grave council, to see your work before you; or you may give away what you will be glad, with all your heart, that you had to give again. I shall insist upon two things.

1. If you vote he shall be Chief Magistrate, who shall judge how far that expression shall extend? You shall not judge, the Chief Magistrate shall interpret.

In the last Parliament there was a thing called the "other House." Never was any thing brought in with more sugar-sweet and plausible words. It shall be a check upon restraint of liberty of conscience. There shall be no bringing in of the old nobility. This makes me suspect we are going to the same things. I thank God I was none of those that gave it my vote. It died at first and was buried; but in the next session it rose up again, as I have good cause to know. Then, it seems, it was judged a Lord's House, except for some limitations. I thought it was not a Lord's House, but another House. But for my undertaking to judge this, I was sent for, accused of perjury, and outed of a place of 600*l.* per annum. I would not give it up. He told me I was not apt: I, that

had served him fourteen years, ever since he was captain of a troop of horse,* till he came to this power; and had commanded a regiment seven years: without any trial or appeal, with the breath of his nostrils I was outed; and lost not only my place, but a dear friend to boot. Five captains under my command, all of integrity, courage, and valour, were outed with me,† because they could not comply; they could not say that was a House of Lords. Divers in this House are sufferers of the same kind. When you come to settle the militia, I shall make use of it, that you may consider your old servants, and not leave the single person the judge; not place

* "He got a captain's commission from the Commons, and immediately raised a troop of horse in his own county. They consisted of select men, whose bravery he proved by the following stratagem. He placed about twelve of them in an ambuscade, near one of the King's garrisons, who, advancing furiously towards the body, as if they had been of the enemy's party, put some of their raw companions to the flight. These he immediately cashiered, and filled their places with others of more courage." See "A Short Critical Review of the Life of Oliver Cromwell," (1747,) p. 20.

"Hi autem initio," says Dr. Bates, "nec arma tractandi, nec equos gnari, diligentiâ solertiâque bellatores acerrimi evascerunt; equis etenim curandis, nutriendis ac detergendis indies assuefacti sunt, et, si opus foret, simul humicubando; arma insuper polire, nitida et usui expedita servare, loricas optimas induere, séque cætero armaturæ genere communire condocefecerat eos Cromwellius." *Elenchus*, (1676,) part ii. p. 332. (They were, at first, unskilful in handling their arms or managing their horses; yet, by industry and attention they at length became excellent soldiers. Cromwell accustomed them daily to look after, feed, and dress their horses, and when needful, to lie with them on the ground. He also taught them to preserve their arms clean and polished, to choose the best accoutrements, and in every respect to be armed to the most advantage.)

† "In a letter dated "Whitehall, February 11, 1657-8," the under-Secretary Moreland thus writes to Mr. Pell, the Resident at Zurich:—

"This morning, his Highness took away the commissions from Major-General Packer, and divers of his officers, for having had a finger in the pye, and endeavouring to make a confusion in the army, and to corrupt it." *Lansdowne MSS.* 755, No. 38.

it where the army and officers may all be blown away by the puff and breath of one man.

Who then shall be judge of this important matter. Westminster Hall knows it as well as A. B. C. that the judges were of different opinions lately, both in the North and in the West, and perhaps they will be doubtful whether a Chief Magistrate in a state be the same with a King upon his throne. One jury may find for the Protector, another not.

I think you have as able and learned judges as ever sat upon the benches; yet they are men: interest has swayed them, as it has swayed me. I am ashamed to tell you how far fear, respect, and hope of preferment have made me swerve from what my conscience thought just. Perhaps others may be subject to the like infirmities. Coney's case I will not judge. Learned men were carried to the Tower, as it was told you. A gentleman imprisoned could not get a lawyer to plead for him.*

The Judges in the King's time, I will not say they were perjured, but there are great temptations where the sword

* See *supra*, p. 104, *note*. "1655. Friday, May 18. This day, Serjeant Maynard, Serjeant Twysden, and Mr. Wadham Windham, were committed to the Tower, by order from his Highnesse and Councel, upon the account of Mr. George Coney, Merchant, for whom they were of councel, and had moved on Thursday for a *habeas corpus* for him, who stands committed to the Serjeant-at-Arms, for refusing to pay custom and excise, according to an ordinance set forth by his Highnesse, with the advice and consent of his Councel. The business was again moved in the Upper Bench Court, on Saturday, but not determined: the further consideration thereof, appointed to be on Wednesday next, in the Upper Bench.

"Wednesday, May 23. Mr. Coney appeared at the Upper Bench barre. Hee said, hee could not engage any to bee counsel for him. Mr. Moore said hee offered to bee counsel for him, but hee would not give him his fee. Mr. Coney said, none but a madman would be of his counsel. Hee had liberty to plead for himself; but his return was found defective. The word *To*, (whereby it should have been directed to *Oliver Lord Protector*) was left out. He remains still prisoner, and hath liberty to renue the businesse." See "Perfect Proceedings of State Affairs," (1655,) No. 295.

and where the money lie. Has not a single person power to put out or in those that will not judge for him? If a judge will not judge to-day, he shall be no judge to-morrow.

But how shall the judge determine what is the power of the Chief Magistrate? Is the law so clear in that point? I own the law, and hold all that I have by it; but do the laws determine where the militia and the negative voice shall be? If determined, what was the reason of all the late wars? Either the law is not clear, or interpreters have been biassed. Latter ages have smarted for what it is said our ancestors did, in not meddling with a debate on the negative voice.

If they do not judge according to the old law, they must judge by the Petition and Advice, and should they so judge, that will go a great way indeed; for by deductions and consequences, merely from the oath, he would make us to swallow the whole Petition and Advice, even the Lords' House to boot, and for not doing that I was esteemed perjured.

I shall not say the Petition and Advice was unduly, but unseasonably and importunately obtained. I would rather choose my habitation under the most arbitrary Government in the world, than under this Petition and Advice without its being amended.

He hath 130,000*l.* per annum settled upon him, besides 60,000*l.* more. This is at his disposal.* He is sworn, indeed, to follow advice of his council; but I will speak nothing how easy a council may be swayed. He hath an army of forty or fifty thousand soldiers to assist him, besides a navy. Was the King's militia ever to be compared to this? to a standing army,† all depending upon the breath of his nostrils, and with 1,900,000*l.* per annum to gratify them, be-

* See *supra*, p. 131.

† The first standing army was raised in 1445, by Charles VII. of France. Soon after, "mercenary troops were introduced into all the considerable kingdoms of the Continent. It has long," says Dr. Robertson, "been the great aim of princes and ministers to discredit and to annihilate all other means of national activity or defence." *Charles V.* (1777,) i. 113. See *Henault*.

sides their pay? The militia in old times was nothing to this. Those were men of interest and estates, that would not be easily biassed; gentlemen of quality, who had not any pay; not to be compared to a standing army, which may be swayed. Besides all this, he hath power also to confer what honours or powers he pleases, places, monies, and what not. I hear a rumour that the army thought they should have a General. They made some address. It was ill resented.

Ay, but you have the purse. But, indeed, he may live without you, for all that. If he be a little straitened, it is but making a peace with Spain, or retrenching his army a little, and he may make a pretty chest, to live without your purse.

Power may alter good men. He has a negative upon you, you may be dissolved to-morrow. What power have you? Ah! a Chief Magistrate with such a power and a negative voice, who would have ever thought to have seen this?

Sir, why should we, by such a vote as this, give away that in gross, and by wholesale, which we must expect to beg again by piecemeal? We shall have to go and say, "We beseech you, as an act of grace, give the poor Commons a little of their own." We gave him a talent, and perhaps after much and humble entreating, he will return us a farthing; and when we get any thing, we must still pay dearly for it.

I am sorry to transgress, by my long speech, the wholesome rules you gave us at your chair.* Upon the whole matter, I humbly move, that you refer the whole to a Committee of the whole House, to consider of such qualifications as are fit to be added to it; and be not entangled with a vote. If this may not be, then make the previous vote, as was said before.

*Mr. Trevor* stood up to speak.

*Mr. Weaver* excepted, saying, he had spoken twice before.

*Serjeant Maynard.* I move, that he have leave. Indeed, if a debate be adjourned, he cannot speak again; but if adjourned only from day to day, a man may speak again.

* See *supra*, p. 4.

*Lord Lambert.* I move, that he have leave to speak.

*Mr. Trevor.* I value the orders of the House more than any thing I could speak.

*Mr. Cartwright.* To add any qualifications will not be for the Protector's advantage; because then it may be taken away again; nor for the people's advantage, because, before, the Protector governed by his own will. Then comes the Petition and Advice, and limits him to govern according to the laws. This question says he shall not govern but as this House shall agree. Now, suppose, before you have qualified him, he should dissolve us. Then he will be left to govern us by will as before, therefore, it were better to let him stand as he does. I would have a previous vote, that nothing shall be of force that you now pass, till all shall be agreed on.

*Colonel Fielder.* It is a mistake to say we are not now governed by law. As to the objection that it was not a free Parliament; if this be void, then others are also void. I hope this Petition and Advice will hold as a law, though in some things imperfect. If it be a law, it must have the formalities of repealing it. Add to it what you please. I would part with none of that.

There is nothing clear in the Petition and Advice to limit the negative voice, but that of money; which your Chief Magistrate will stand more need of than you will do of laws; having the old laws. I move to have the words added, "according to the Petition and Advice."

*Mr. Knightley.* I am sorry to hear that doctrine, that the Petition and Advice is the foundation of your rights, rather than *Magna Charta*,* the statute *De Tallagio*,† and the Pe-

* See vol. i. p. 406.

† "A statute, 25 *Edw.* I., commonly called *de Tallagio non concedendo.*" The king declares: "No tallage or aid shall be taken or levied, by us or our heirs in our realm, without the good will and assent of Archbishops, Bishops, Earls, Barons, Knights, Burgesses, and other freemen of the land.

"The word tallage, [or *taille*] is derived from *tailler*, to share or cut out a part, and is metaphorically used for any charge, when the king or any other does cut out, or take away, any part or share out of a man's estate. "My

tition of Right.* I would not have it named. Haply you will think it fitter to pass it in silence than to arrange it here. I would have those words left out.

*Sir Henry Vane.*† I know very well the great disadvantage that any person suffers, that in this great and grave assembly shall, at this time a day, offer you any thing. You have spent three days in the debate, and it is not unsuitable to your wisdom to be yet on the threshold. The more time you have taken, the more successful, probably, it may be.

That which called me up at this time was what the last gentleman said, that is, to do things with unity. At least we shall be at greater unity, if not greater amity, by having patience to hear one another, and admitting the variety of reasons and judgments which are offered by all men. Though a large field has been led into, the thing is very short. Consider what it is we are upon, a Protector in the office of Chief Magistrate. But the office of right is in yourselves. It is in your hands, that you may have the honour of giving or not giving, as best likes you. You may confer it, if you please, for any law to the contrary brought now into your House. I shall advise you to this, as was moved: give not

"My Lord Coke (2 *Inst.*) tells us that the year before this statute was made, the king had taken a tallage of all cities and boroughs, without assent of Parliament; whereupon arose a great murmuring and discontent amongst the Commons." *English Liberties* (1719), pp. 64, 67, 73.

* Given at large, *Ibid*, pp. 180—185. See vol. ii. p. 137, *note**, *Rushworth*, (1703), i. 373, 376, 391.

"The last great act of Sir Edward Coke's life," says Mr. Godwin, "was the framing the Petition of Right, which was endued with the form of a law, in the Parliament of 1628. The purpose of this measure was to forbid the imposing any gift, loan, benevolence, or tax, to the king, without the authority of Parliament; to declare that no subject shall be detained in prison, without having the power to claim his deliverance by due course of law; to abolish the arbitrary billeting of soldiers; and to condemn the proceeding against any of the subjects of the realm by martial law, during a time of peace. Sir Edward Coke was fourscore years of age at the time of passing this law." *Commonwealth*, (1824) i. 9.

† In this speech, as well as that by Major-general Packer, are numerous corrections and additions from the *Goddard MS.*

by wholesale, so as to beg again by retail.* To give, will, at any time, get you many friends. It therefore concerns you in this business, to have your eyes in your heads, to look well about you, that it slip not from you without considering what is your right, and the right of the people.

The wise providence of God has brought things in these our days, to the state of government as we now find it. I observe a variety of opinions as to what our state of Government is.

Some conceive that it is in King, Lords, and Commons; that the principles of old foundations yet remain entire, so as all our evils are imputed to our departure from thence.

It hath pleased God, by well-known steps, to put a period, and to bring that Government to a dissolution. All the three Parliaments in the late King's time, found the state of things in slavery. I have had some experience since the two Parliaments in 1640, and remember when the Parliament considered the state of the nations, that they found them in a grand thraldom of oppression and tyranny, endeavouring to carry us up even into Popery. God made us see the state and condition we were then in. The consideration of these things would have made us make long sweeps to redress it; but Providence led us on step by step. Therefore, having the legislative power, God saw it good that we should change the Government: but we found great difficulties in the work, as most men were willing rather to sit down by slavery, than to buy themselves out of it at so great a price.

The first thing expected was, that justice should be done upon delinquents; who had so much the ear of that Prince, that they told him he had power enough to protect himself and them too. He had the power of the militia. These grievances brought us to consider where the right of the militia lay; and when we saw it was in ourselves, we thought to make use of it with moderation; choosing rather to use it to reduce the King by fair means, than otherwise.

So well satisfied was this House then with the principles of that Government, that there was then a declaration† drawn

* See *supra*, p. 169. † See vol. ii. p. 323, *note*.

in favour of it. I was one of that Committee. I hear reflections as if I changed from that. I think it now my duty to change with better reason. They did think fit to publish that which was to preserve that ancient fabrick of Government; according to such qualifications as might be for the public service. I am well satisfied it was the clear intent of their hearts.

But this encouraged the King, and brought it to that issue at last, that he hardened his heart; till it was resolved to make no more addresses, but to bring him to judgment. But, in the meantime, applications were made to him, still imploring him to be reconciled; and nothing was wanting in the House, that if possible, he might have saved the Government and himself with it; but God would not have it so.

God knows best what that work is, which he is to bring forth. When all applications could not prevail, they thought fit to bring the King to judgment. Thereby the state of affairs was much altered.

This House then thought fit to apply themselves to the Lords, against the Scots' invasion, and in the great case of justice upon the King. The Lords refused both.* In this juncture, they were reduced to the necessity of doing that which is now the foundation of that building upon which you must stand, if you expect to be prosperous.

When they came to look upon the delinquency of the King, and considered him as an object of justice, it was then declared by them that the taking away of kingship was the only happy way of returning to their own freedom. Their meaning thereby was, that the original of all just power was in the people, and was reserved wholly to them, the representatives.

When the Parliament, in questions as to what was just and right, had gathered up all into themselves, it was disputed in what way the King should be tried. They counted themselves then prepared to grant out a commission to try

* See vol. ii. pp. 384, 387, *notes* *.

the King.* I confess I was then exceedingly to seek, in the clearness of my judgment, as to the trial of the King. I was for six weeks absent from my seat here, out of my tenderness of blood. Yet, all power being thus in the people originally, I myself was afterward in the business.†

* See vol. ii. pp. 387, 434, *notes*.

† In a paper left by Sir Henry Vane, containing "the substance of what he pleaded on the day of his trial," which I have before me, "printed in the year 1662," immediately after his execution, there is an account of his conduct at this period. Having referred to the time when that "great violation of privileges happened to the Parliament," (see vol. ii. p. 387, *note*) he adds:—

"This made me forbear to come to the Parliament for the space of ten weeks, (to wit, from the 3rd of December, 1648, till towards the middle of February, following,) or to meddle in any public transactions. And during that time, the matter most obvious to exception, in way of alteration of the Government did happen. I can, therefore, truly say, that as I had neither consent nor vote at first, in the resolutions of the Houses, concerning the *non-addresses* to his late Majesty, so neither had I, in the least, any consent or approbation to his death. But, on the contrary, when required by the Parliament to take an oath to give my approbation, *ex post facto*, to what was done, I utterly refused, and would not accept of sitting in the Council of State upon those terms, but occasioned a new oath to be drawn, wherein that was omitted.

"In like manner, the resolutions and votes for changing the Government into a *Commonwealth*, or *Free-state*, were passed some weeks before my return to Parliament. Yet, afterwards, I conceived it my duty, as the state of things did then appear to me, to keep my station in Parliament.

"This I did upon a public account, not daring to quit my station in Parliament by virtue of my first writ. Nor was it for any private or gainful ends, to profit myself or enrich my relations. This may appear, as well by the great debt I have contracted, as by the destitute condition my many children are in as to any provision made for them. And I do publicly challenge all persons whatsoever, that can give information of any bribes or covert ways, used by me during the whole time of my public acting."

Yet, though the Commons had petitioned for the life of Sir Henry Vane, as not concerned in the trial and execution of Charles, and the King had granted the prayer of their petition, and notwithstanding the notoriety of the fact, the prosecutor for the crown commenced his legal proceedings by producing the following evidences, of whose credibility he does not insinuate the smallest diffidence:—

The King, upon his trial, denies this power to be in the Parliament: they try it, and they seal it with the blood of

"The warrant of the 30th of January, 48-9, was proved to be the hand of Sir Henry Vane, by Thomas Lewis and Thomas Turner, as they believe, neither of them affirming that they saw him write it, but knowing his hand, believed it to be so."

The "King's Attorney-General" was "Sir Geoffrey Palmer," the learned leader of "Sir John Glynn," and of Sir Henry Vane's colleague in this Parliament, "Sir John Maynard," who were now among "the King's Counsel against the prisoner; [see vol. ii. p. 461, *note*,] no counsel being permitted to speak one word in his behalf, to the matter or form of the indictment, or any thing else." See "The Tryal of Sir Henry Vane, Knight, at the King's Bench, Westminster. Together with what he intended to have spoken, the day of his sentence, for arrest of judgment, (had he not been interrupted and overruled by the Court,) and his Bill of Exceptions. Also his speech and prayer, &c. on the scaffold." pp. 27, 46, 74, 96; *State Trials*, (1774,) ii. 441, 448, 459.

Among the specimens of professional versatility exhibited at the English bar, I know not one more complete than the appearance of Glynn and Maynard, as Crown Prosecutors of Sir Henry Vane, before judges who had freely acted under, and thus had unequivocally sanctioned, the powers in possession during the interregnum. To these circumstances should be added, the now well-understood corrupt influence, (such as the counsel tampering with juries, &c.) exerted on that occasion. The whole transaction well exemplifies "the Complaint of Conscience," in an earlier century, which Bishop Percy brought from an old MS. into his "Relics of Antient English Poetry," (1794,) ii. 289.

The author of this "allegoric satire," is severe upon the lawyers of his time; and not unjustly, if barristers would then lend their learning and eloquence to advocate any cause; either to shield the accused from the rigour of sanguinary laws, or to invoke their penalties on his head, with no conscientious discrimininatiou, but just as they happened to have received a retainer. *Conscience*, in quest of a patron, wanders through the metropolis to "the Court of Conscience," probably the Court of Chancery. There, he says,

"Though the judge us'd my name in everye commission,
The lawyers with their quillets wold get my dismission."

He now proceeds further among the *Glynns* and *Maynards*, and thus relates the result of his experiment:—

"Then Westminster-hall was noe place for me;
Good Lord! how the lawyers began to assemble,
And fearful they were, lest there I should bee!

the King This action of theirs, was commanded by this House to be recorded in all the courts of Westminster Hall and in the Tower.

If you be not now satisfied with this business, you will put a strange construction upon that action, and upon all that has been done by the General and soldiers. If you, here, will now doubt this right to be in you, you draw the guilt upon the body of the whole nation. You join issue with him upon that point. It will be questioned whether that was an act of justice or murder.*

Brought, step by step, unto your natural right, by an unavoidable necessity, that little remnant of the Parliament were now the representative of the nation, springing up from another root. This had a more clear foundation, being thus the supreme judicature, to comprehend all government in itself. Whether the death of the King caused not a dissolution of that Parliament, as to that doing it then had, and as it was taken to be, I know not. I leave that to the long robe.

It was then necessary, as the first act, to have resort to the foundation of all just power, and to create and establish a free state; to bring the people out of bondage, from all pretence of superiority over them. It seemed plain to me, that all offices had their rise from the people, and that all should be accountable to them. If this be monstrous, then it is monstrous to be safe and rational, and to bear your own good.

It is objected, that this nation could not bear that government; but Holland bears it against the power of Orange. They keep the office of Stadholder vacant to this day.† So

The silly poore clarkes began for to tremble;
I show'd them my cause, and did not dissemble:
Soe they gave me some money my charges to beare,
But swore me on a booke I must never come there."

* See *supra*, p. 110, *note* ||.

† Under the administration of the celebrated family of *Dewit*. The Prince of Orange, afterwards William III., was now a minor, having been born a few days after his father's decease, in 1650.

do other places. This is a principle, that we may bear it, if we can bear our own liberties, or that we have not the impatience of the people of Israel: unless with the Israelites, we will return to Egypt, weary of our journey to Canaan.

This being the case, we were declared a free state. We were after tossed upon all those billows that sunk us in the sands. Though we miscarried then; though this free state was shipwrecked, yet you have got a liberty left to say it is now again in your possession; else I am mistaken. If it be so, I hope you will not part with it, but upon grounds of wisdom and fidelity. If you were but arbitrating in the cause of a private friend, you would make the best bargain for him that you could; you would so do as not to give away the right of him by whom you were intrusted, but upon good grounds. That which you give, give it freely on grounds of justice. Understand well your terms.

This brings me to the consideration of another thing, which is, that the first government being dissolved, another is brought into the room. Though not perfect, yet, it is said, the foundations are laid, upon which we may build a superstructure of which we need not be ashamed. Now shall we be under-builders to supreme Stuart? We have no need, no obligation upon us, to return to that old government. I have a vote.

For the covenant with the Scots,* their invasion did render that covenant invalid. They would have repossessed a King and imposed him upon this nation, by virtue of that covenant

"His grandmother, a lady of masculine courage, who suffered with impatience the eclipse of the House of Orange, which she had beheld in its brightest splendour, was not a little industrious to awaken the dependants and favourers of the Nassovian grandeur." These she taught to regard themselves as "contemned and slighted," and "their reputation lost," while "all the employments of the Commonwealth were bestowed upon the sons of burgomasters." At length, in 1672, there was a deputation "in the name of the States to invest his Highness in the ancient dignities formerly belonging to his ancestors." See "The History of William, Prince of Orange," (1689,) pp. 52, 54.

* See vol. ii. p. 214, *note* *.

which they had broken. The Parliament showed that their shackles were broken; it did not oblige any further. That it was famous and had power: that was the Israelites' argument for worshipping the sun and moon. If we return to an obligation, by virtue of the covenant, by the same reason we may return to worship the sun and moon. I hope those shall not sway here.

Lastly, at the dissolution of the Long Parliament, you lost your possession, not your right. The Chief Magistrate's place was assumed without a law. There was assumed with it, not only the power of the crown on the terms of former kings, which hath its foundation and regulation by the laws, but the possession was assumed. You were then under various forms of administration: some that had not the characters of trust upon them, some too limited. Still you were kept out of possession. Parliaments have been called, and as often broken.

This Petition and Advice, which is now so much insisted upon, was never intended to be the settled government, but only to be a pair of stairs to ascend the throne; a step to King, Lords, and Commons. It pleases God to let you see you have not been ill-counselled to wait upon him a first day, and a second, and a third day, to see what he will hold out for your peace and safety; for asserting the liberties of the people. This Bill huddles up, in wholesale, what you have fought for, and is hasted on, lest you should see it.

We have now a Petition and Advice that comes in place of the ancient Government, the Instrument, and all other forms. Yet, if this were the case, you are, notwithstanding the Petition and Advice, in the clear rightful possession of this Government, which cannot be disposed of but by your consent. The old Protector thought it fit to have it given him from you, and had it by your pleasure invested upon him. But, although it was acknowledged that he had power to get it, yet he thought fit to make it your free gift. It will not be denied now: a presenting this office by that Parliament, and the open investiture of him in your chair, prove it. Yet as to this gift of yours, I dare be bold to say, the thing given

was hardly understood. By giving of this office, they gave, in the 16th Article, the power of their own dissolution.

It being acknowledged to have been your gift, let us consider what was given, and how given.

The gift was the executive power, the ruling power. That is the office of Chief Magistrate. All the legislative was then in the people.

The Commonwealth would not put the executive power out of their hands. For this reason, they set up those shadows, the Keepers of the liberties of England, as an executive power, to distinguish it from the legislative.

This, then, was the thing given. The Petition and Advice hath made a difficulty of returning.

The power of the purse indeed is left us, because they know not how to take it from us. There is no dispute but you have a right to open the people's purse; because Kings knew they could not well take it: but the Chief Magistrate, they would not allow you that to give.

Now, this power and the office were given, it seems, by the regulation of the Petition and Advice; the whole executive power of the late King was all given, at one clap, to the late Protector for life. This being given to him, was not given absolutely to any other for life. Nothing was given him more, only the nomination and declaration of a successor; which must be according to law. So says the Petition and Advice. This nomination must first appear, before we can say this gentleman is the undoubted Protector. Had I thought this had been said before, I should have spared both you and myself.

That which is now brought in, the Bill of Recognition, takes it for granted, that there is one in the possession of the Protectorship; for it requires that you acknowledge his right and title, not that we shall acknowledge his person, and then inquire, what is this right and title? It is hard we should be put upon that. Let us know what this right and title is that we must recognize. But it seems the Parliament that made the Petition and Advice, they gave it, and we must acknowledge it.

If he hath any right, it must be by one of these three ways:—

1. Either by the grace of God and by God's Providence; that if he hath a sword, he may take whatever is within the reach of it, and thus maintain his right.

2. Or as the son of the conqueror. He was, indeed, a conqueror on your behalf; but never, of yourselves, fit for you to recognize.

3. Or lastly, by the Petition and Advice. But that cannot be urged, until it doth appear that he hath it according to that. Yet that is only a nomination, which hath nothing of constitution until you have made it. He must come to you for that. I appeal then, if this has not deserved three days' debate. Deserves it not more, to set nails upon it? May it not deserve a Grand Committee, to convince one another in love and unity?

Therefore I shall move that this Bill may, upon the whole matter, be committed to a Grand Committee, where reason may prevail.

It is not a sudden recognition, a sudden obtaining of the first steps that will direct us fairly into the room. It must be on such an unshaken foundation, you will maintain it against the old line. If you be minded to resort to the old Government, you are not many steps from the old family. They will be too hard for you, if that Government be restored.

Instead of the son of a conqueror by nature, make him a son by adoption. Take him into your own family, and make him such an one as the Great One shall direct you. When the army see they are yours, they will be protectored by you.

I would have all names of sectaries laid aside, and righteousness go forward. Let fees and extortions be looked into, which make the laws themselves your oppressors. I have discharged my conscience, and look on it as a special testimony of God's Providence that I am here to speak this before you.

*Mr. Gewen.* I take it for granted, that nothing shall bind

this nation, that is not done in a full and free Parliament. I am not for the humble Petition and Advice; yet the carriage in that Parliament, compared with the old Parliament, is very innocent.

The latter end of the Long Parliament was assumed. They took a thing which neither God nor the people ever gave. It was in the collective, not in the representative. All was null and void which they did. Never was such violation of the rights of Parliament as in that Parliament. They were but *splendida peccata, felix scelus.* This, in truth, is the fifth Act of meeting in Parliament since that time.

*Nolumus hunc regnare.* I hear divers gentlemen speak against the Bill; not what they would have, but what they would not have. They would return to a Commonwealth again; to former irregularities. It is impossible for them to bring that to pass, unless, with an army they take out all the members that are against returning. My opinion always was, and is, that a well regulated monarchy is best. *Fieri non debet, factum valet.* For my part, I had no hand in it. I pray God, deliver me from bood-guiltiness. We are like the needle that is touched, wading still till we come to the old foundation. There must be some exceptions to the Bill, else it cannot be committed. I would not have it that the people should be indefinite in their obedience. I would have it limited to the law. I am against a Grand Committee; but would have the question, with the additions, moved.

*Serjeant Maynard.* A large time has been spent in the debate; the consequence of it requires it. I shall use no preamble. We have had stories by gentlemen of the late troubles, *quorum pars magna fuerunt.* It is not pertinent to our question to tell those stories. There were great oppressions; delinquents protected.

This was not the quarrel for blood. God deliver me from that. We must go to Mariana* for grounds to prove that the sword could be taken up other than to defend.

* John Mariana, a very learned Jesuit, who died at Toledo in 1624,

The first cause of the quarrel, was not to assert to ourselves a right which was no right before. But justice upon delinquents being denied, it is true, in process of time, these things came on; the militia, negative voice, and tender consciences. You looked upon such things as those without which you could not lay down arms. Such, then, was the cause of carrying on the war, not of taking up arms. God forbid! I would rather have been a Cavalier a thousand times. As to arms raised to protect delinquents, that could not be the King's act,* only his evil counsels.

aged eighty-seven. There he had published, in 1599, a treatise, *De Rege et Regis Institutione.*

Mariana, according to his biographer, "ose soutenir dans cet ouvrage qu'il est permis de se defaire d'un tyran, et il y admire l'action detestable de Jaques Clement." The Parliament of Paris, unable to reach the author of the book, and not satisfied with the censure of the Sorbonne, and the disapproval of the Jesuit's superiors, resorted to a sentence *de comburendo*, one of the *rationes ultimæ regum*, who, according to Milton, "though strong in legions, are but weak at arguments."

"Il fût condamné par le Parliament de Paris à être brûlé par la main du bourreau, censuré par la Sorbonne, et désapprouvé par ses supérieurs." See *Nouv. Dict. Hist.* (1789) v. 606.

* An assertion as complaisant to the memory of Charles, as it is at variance with the history of his reign. (See especially the King's conduct in the case of Buckingham, vol. ii. p. 382, *note*). The learned Serjeant, who would, probably, have written the history of the Stuarts with the integrity of Hume, might think it prudent, perhaps in the hearing of the royal spies who sat in this Parliament, thus to provide for an admission to favour, on the not improbable return of the legitimate race, an event likely to be accelerated by the precarious condition of Richard's power, and these endless debates concerning the manner of his elevation.

On Glynn and Maynard (*supra*, p. 175) I ought to have added that the prosecution in which they engaged their professional assistance, appears to have been regarded, even by devoted Royalists, as a base and indefensible transaction. Lord Clarendon, to whom Charles had dictated his royal pleasure (see vol. ii. p. 184, *note*,) for the destruction of that inflexible patriot, avoids the subject in his Continuation, and Parker, the time-serving Bishop of Oxford, though he unscrupulously accommodates other facts to his purpose, in the "History of his Own Time," does not venture to mention the case of Sir Henry Vane.

It was moved, that the right did revert by escheat to the people upon the great change; and now you must give it.

It is clear you came hither upon the Petition and Advice. I would have any man answer it. I challenge no man. I was not at making it; yet I am bound by it as a law.

It it said force was upon them; the House was then under a fear, and so not obliging. Look back and you will find a greater force upon the face of the greatest affairs. Was there not a force when they sent men to demand their members, eleven of them.*

* The following extracts from *Rushworth* refer to this period. The intermediate passage may serve to show how various were the engagements of the Long Parliament, and how absurdly they encumbered themselves with a cure of souls amidst arduous occupations on the most important civil interests. There is, indeed, sufficient evidence, though not always fairly admitted, that Protestants have been ready as Catholics to burn books, or the authors of them, according to the extent of their power, or the spirit of their times:—

"1647, Sept. 3. Upon debate it was ordered that summonses from the Commons should be made out for Mr. D. Hollis, Sir W. Waller, Sir J. Clotworthy, Major-general Massey, Colonel Walter Long, and Mr. Antony Nichols, to attend the House, to answer things objected against them. As also, that Mr. Glyn, Recorder of London, [Baronet, not the Lawyer] and Sir John Maynard, attend in like manner.

"Sept. 6. A report was made to the House about a pamphlet lately printed, of one Mr. John Biddle's, [See *supra*, p. 118, *note*] being twelve arguments against the deity of the Holy Ghost. Upon debate it was ordered, that it be called in, and burnt by the hangman, (which was done the day following,) and that Mr. Biddle be referred to the examination of the Committee for plundered ministers.

"The Commons proceeded to the case of Sir John Maynard, who was accused upon oath, that he had with great zeal endeavoured a new war, having subscribed warrants for raising of horse within the City, &c. Being called in, and heard, it was voted that he be discharged from being any longer a member, and committed to the Tower: and that an impeachment of high-treason be drawn up against him." *Hist. Col.* (1708) vi. 259, 261.

"Feb. 5, 1647-8. The peers proceeded to judgment on Sir John Maynard, one of the eleven members, who appealed from them (as not being tried *per pares*) saying their lordships were no competent judges of him, and pleaded likewise, for this purpose, *Magna Charta*. Their lordships took the judgment of the judges in point of law; and ordered

Our members were carried to the gaol; one from behind me, another before me. I asked if they would take me. They said, they knew not what to make me. I came again, and before I spoke, it was cried I spoke. A Committee was appointed to inquire of it. We had all been voted traitors but for some worthy gentlemen that stood against it. Never was a greater force than on that Parliament. If that nullifies an Act of Parliament, this will be overruled when we are in dust and ashes. All your sales will be void; an ill bargain for your monies, on Bishops and Dean and Chapters' lands.

Who dare say this out of this House, that this law* is void. This is a law as well as all done in 48, 49, and 50, and since. There is greater force to turn out, than keep out. I have had ill luck. No man can say a Parliament is under force, but to a Parliament itself. It must be put to the question whether this law is law. You will make a conclusion out of a proposition, and not affirm the proposition. If every man should speak it, yet, if not voted, it is not good. It is said, not pursued. It is a great deal more wisdom to submit than to inquire. Some have spoken of the great seal. I know not whether they believed themselves when they said so. It was a rhetorical expression. I suppose it may be verbal, but

that Sir John be remanded to the Tower, be fined 500*l.*, have sixteen days to give in his answer, and his trial to proceed before the Lords, on the impeachment of the Commons, according to former order." *Ibid*, p. 338. See *Whitlock*, pp. 268, 292; Hollis's *Memoirs* in Maseres's *Tracts*, pp. 256, 302.

*Rushworth* reports, at this time, "Feb. 6, a letter from the Hague," which says, "Here seems a kind of fatality upon the counsels and person of your King. This last restraint, with the votes, has astonished the royal party here, which is not small. They cannot tell which way to steer. They look on Scotland, they look on France; but say, there must be money; and if that were had, it were no wonder to see 10,000 merry souls,—who, at present, lie here, and curse you in every cup they drink,—run over, and venture one cast more for the crown." *Hist. Col.* vi. 340.

* The Petition and Advice.

shall not now debate it. God's will has been done in taking ——*

1. It is said by the grace of God, &c. he must be in. I will say to none of these; but I find him in. It is said he did not come in lawfully to be Protector; lawfully, or unlawfully, he came to be Protector. He did become, that is English. Recognize, or agnize, acknowledge, all one. *Recognoscere* no more, but severally to acknowledge. Huge force told of; but nobody says who did it; the soldiery I suppose. They did desire, indeed, that they might not be removed without their own consent. You did swear to obey the Protector, and yet you will not obey him. I cannot distinguish between myself as a burgess and as a christian. I cannot distinguish myself out of my conscience. In the Covenant, we swore to God, not to the Scots. You gave me power to put my own interpretation. I would not have gone three strides back if I had thought of that interpretation. Myself and three more gentlemen had that privilege of interpretation. If a mutual stipulation, another thing. What had the Scots to do with the English church?

I am afraid of delay. It will breed a great mischief; I desire you would pass the vote with limitations. A suspension is not a temporary denial. That objection is weighty, give by wholesale. You are but directing a Committee, not making a law. The objection is clearly mistaken.

*Lord Lambert.* There is a weighty business before you, of large extent, and of great concernment. The peace and settlement of three nations, *meum* and *tuum*, equal distribution of justice, are all concerned in the things before you.

I shall take leave to make some observations on the narratives that have been given you of transactions in these fourteen years. We have heard many relations of particular concerns, wherein, of things openly done, we have several differing opinions. Every man tells that part best which concerns himself most. I am afraid, if I tell you any thing

* Some words omitted in the MS.

of my own accounts, I shall fall into the same infirmity; but I shall only from this observe the baseness of man's nature. Let us wave any thing which may concern ourselves.

Many things have been disputed, whether this or that Parliament be good. One tells you, all sales of lands are void;* another tells you, another part is void. Many things have been said, but I think we all are guilty, even to our lives, if things should be scanned with the strictest justice.

Other things have been said more near the matter.

One proposition hath been made, as to Government itself, that it is all from God. We find it expressed so in Scripture, by that dream of Nebuchadnezzer. He was a great tyrant, with no reason but his will. After him, was another monarchy, with limitations, the monarchy of the Medes and Persians; then the Grecians; lastly, the Romans. All these governments were set up by God. Monarchy is the worst Government; yet, of that, God would not have them to recede from it. Some people are more fit to be governed by a tyrant, than by themselves;† as, among others, the wild Irish, who provided in a treaty, that they should carry the vermin in their heads, and tie their horses' tails together. Some people, that are more discreet, are governed by a popular Government.

For the transactions these fourteen years, it is no matter whether the militia, negative voice, or delinquency, were the first occasion of the quarrel; or which had the van. It was certainly a complicated quarrel, under all the united prerogatives and exorbitances of an old monarchy, and the defence of the people to reduce it to its just limits. The prerogative began too great, and continued too great.

Therefore, it is not amiss to look back into the parties concerned, on both sides: what party was the King's; what were the Parliament's dependencies; and what engagements

* See "Serjeant Maynard," *supra*, p. 184.

† See Bishop Burnet, "we *won't* be governed by one another." Vol. ii. p. 417: and on such government, *supra*, p. 157, *note*.

either side had to bring such great bodies for their defence into the field.

The King and Parliament were, as it were, the two great general heads of this difference. The universality of their quarrel engaged almost all the world on one side or the other; especially in England, Scotland, and Ireland, scarce a family but was divided. All had their angry divisions, and something of interest, too, bound up in this quarrel.

Now who have been the assistants of these two great parties, and what have been the strength, the arguments, and the interest, that enabled these two parties to bring so many men into the field?

For the King, it is plain that Papists, prelates, and delinquents, all such as had places or titles, pluralists of honour or profit, and generally all debauched people,* ran with that stream.

For the Parliament's party, an honest, sober, grave people, that groaned under oppressions, thirsted after grace, the reformed party of the nation, that owned their country's service, that had no by-ends, and expected no advantage from the King or from the court.

And these were the arguments and interests that brought the parties into the field:—

1. The Papist had his toleration, and prerogative was

* See Robert Boyle's opinion, in Dr. Birch's Life (1744), p. 50. Lord Clarendon praises the "chief commanders of the Cornish army" of the King for having "restrained their soldiers from all manner of licence, obliging them to frequent acts of devotion." Yet he afterwards charges "the remains of the western army" with being "dissolute, undisciplined, and wicked;" and the horse, especially, as "being only terrible in plunder, and resolute in running away; whom their friends feared, and their enemies laughed at." *History* (1712), ii. 276, 725.

In another place, Lord Clarendon admits that "Cromwell had been most strict and severe in the forming the manners of his army, and in chastising all irregularities; insomuch, that sure there was never any such body of men so without rapine, swearing, drinking, or any other debauchery." He excepts, indeed, "the wickedness of their hearts," but they were anti-royalists, and Lord Clarendon was a royal courtier." *Continuation* (1759), 11. 40.

that strength and source from whence that was to proceed. He had a toleration for his person for the present, and for his religion, it was hopeful.

2. The Prelates, they had the advancement and the formalities, which all flowed from the same fountain. Preferment flowed readily on.

3. Dependence upon places of honour or profit, in pensions or expectancies, engaged many, and led a great way; but when I spoke of honour, I spoke of names, not things.

4. Debauched people expected liberty, or rather license, to exercise their lusts and villanies without control. If any cooling for a man's tongue, it was there. I hope the villanies that party daily acted shall never have encouragement from your chair.

This was universally true.

On the other side, there was only a sober, quiet, reformed people, generally thought, perhaps not universally so neither. I will not ask who had the justice of the cause. I will not judge it myself, when God himself seems to have determined the cause. I observed once, from a minister, that the Parliament had got the prayers of a fanatic people, which had got together an army, fit for God Almighty to do miracles withal.

In this great matter every man should lay aside self, relations, and persons, and study to have a Government, so settled as may have strength, and a dependance upon the reformed interest and party of the nation. That it may not depend upon such supporters as the King had, nor give encouragement to that party that ran along with the King's Government. If that had taken its swing, where had we been?

No man sits here but he adviseth for posterity. Let us not lay a foundation again that may be subject to such exceptions. I do not fear that any man here would willingly advance those old ends, but I see alterations, even farther than ever I expected, not as concerning myself.

I fear not any desire or design to advance the Papists, but they are very busy and hopeful at this time.

So for prelacy, I think not any do design that. I hope there is no danger of Papists or prelates; yet I have seen a paper, a cloud as big as a man's hand, that may spread that way.

The best man is but a man at best. I have had great reason to know it. Therefore there ought to be a great deal of care even of the best man. Of your honours you ought to take as great care as ever.

The present militia differs very much from what it was before. A deputy-lieutenant in the county, or a captain, were rather things of honour than dependency.

Too much dependency upon the Chief Magistrates, will strive to come in here; and when it doth come, it will have its bias. I shall always speak ingenuously. It will not be fit to hide our diseases from you. I hope you will be careful to cure them.

The first thing laid hold on was, the bringing delinquents to punishment. Does not the same bone and quarrel of prerogative lie now before you, in that Bill, tied with a double cord?

1. According to the Petition and Advice. I am not so well skilled, as to find much good or much ill in it.

2. According to the laws of the nation. It seems to be a mist over what you may challenge as your own due, the militia and the negative voice. To give from you, what was duly placed in you; after a possession to reject it, is worse than to lay a long claim to it, and never possess it. Consider them well, before you put them away.

There is objected unto us, dangers from abroad, great preparations made by the Dutch. Those things may be pressed too far. Danger from abroad is no argument; yet it ought to be some spur. The loss of time may be ill for the whole nation; so it may urge us to go on with what expedition conveniently may be.

As to the other House, I shall speak to that. It was heretofore *frenum imperii*, to restrain the extravagancies of the King in those elder times. To balance, was the good that naturally brought them in. They had great interest, and something of dominion. As to that which gave them any thing of

interest, and, by consequence, power to protect the Commons of England, I have always approved very well of them; but as to that which gave them dominion, I like not that. In reference to the people, they have done many good offices.

They were heretofore *frena imperii*. They are now many of them good men indeed, and for some of them, I know, wherever their persons are, their hearts are here with us; their interest (I hope in the opinion of most of them) being more for the safety of this House, than of that where they do sit. Yet they have a negative upon all your proceedings, and may be debarred of their places of trust. Their interest is not so considerable, but they must always have a dependency upon the Chief Magistrate, and be forced to close in with him. Thus they will be rather *stimula*, than *frena imperii*. It is in yourselves chiefly to make such a settlement as may encourage a reformed interest, peace, and quiet.

Sir, it is confessed by all, that there is a Government in possession, and by law: but be it never so perfect a law, I am sure it is but an imperfect Government. Providence hath put a prize into your hands, that you may have the ordering of all, to be improved for the good of the whole.

Another flaw in the Government is, that the distributions and elections shall be as this power shall agree upon; another House, settled on another foundation than the Petition and Advice. So that you are now upon three foundations. The law you are upon, requires a King and a House of Lords. It is hard to serve a Government depending upon so many laws; so inconsistent. It will not be a perfect Government.

Upon the whole matter, I think the proper question before you is the commitment of this Bill. Now how shall you commit it? Several particulars are offered to be added; to divide the question; to put in, according to the Petition and Advice; to be with such limitations, &c. This resolve will stand on your books, and it should not be entered without the equity that it ought to take along with it.

If I should speak in favour of the Protector, I would here say, make not that vote at all. I would have the vote be, that you will be ready to join with him against all that shall

oppose the Government, and you will give a good testimony. Whatever you say to him, let the people's liberties be on the backside of the bond. Let them go hand-in-hand. Commit it to a Grand Committee.

*Sir Lislebone Long.* I will not go far back, as that noble lord. I agree with him in the facts, and his observations, but not that the consequence shall be the same, now that we are delivered into that condition wherein the people acquiesce in most things.

I shall not reflect upon any laws nor settlements that have been. This stands upon as good a bottom. There has been peace and tranquillity under this Government. The vote obliges not till the Bill be passed. That which Lord Lambert moved, did more oblige than the vote propounded. Do as much as you may, without concluding yourselves as to the Government that is a foot. You may debate it again.

Commines saith, after the death of the Duke of Burgundy, a Parliament met, and the debate about the Government lasted so long, that a common enemy* had got half the land. You cannot prevent this better, than by putting this question; but I would have it without limitations.

*Mr. Reynolds.* We came hither to make this a healing Parliament. You have spent three days upon it, and if you spend three days more, you will not repent it. I would, to prevent treason at home and abroad, make a vote before we

* Whose "treacherous baseness, amazing even in the History of Louis XI.," Dr. Robertson, (*Charles V.* i. s. 2.,) has exposed from *Commines*. *Henault* thus describes the royal progress, (in 1477,) and the ingenious *fraus pia*, to secure a possession, by becoming a vassal of the Holy Virgin:—

"Le Roi, qui le premier avoit établi l'usage des postes, jusqu'alors inconnu en France, par un édit de 1464, est bientôt informé de cet évenement, et en profite pour reprendre plusieurs villes en Picardie, en Artois, et en Bourgogne. Il s'empare aussi du Comté de Boulogne, relevant de l'Artois, en donnant une indemnité à Bertrand de la Tour, Comte de Boulogne, et pour éteindre la suzeraineté, il la conféra de son autorité à la Sainte Vierge, qui se nomma Notre-Dame de Boulogne, afinque, quoi qu'il arrivât de l'Artois, il ne pût jamais avoir le Comté de Boulogne dans sa mouvance." *Abrége Chron.* (1789,) ii. 407.

rise, to acknowledge him to be Protector, in fact, and that you will assist him against all competitions.

*Colonel Allured.* I move to adjourn the debate till to-morrow.

*Mr. Neville.* It is against my business which is appointed to-morrow, but I will give up mine to the public. There is no question before you as yet, some time will be spent in wording the question.

*Mr. St. Nicholas.* I second the motion to adjourn.

*Mr. Bodurda.* The previous vote is the proper question.

*Lord Lambert.* The proper and natural vote is for commitment.

*Mr. Attorney-general.* The proper question is the previous vote; for you must direct your Committee. I would have the question stated.

*Mr. Scot.* There is not a word in the question but what is controverted, every *iota*. We are not ripe for any question. I hope provision is taken against your common enemy. Your Army are fixed against that interest, at least.

It was cried out he had spoke.

*Colonel White.* They ought not to cry out.

*Lord Fairfax.* I move that a vote pass for securing the peace, in the mean time; as Lord Lambert and Mr. Reynold's moved.

*Sir Henry Vane.* Let not that question intervene, till it also be debated in a Grand Committee.

*Mr. Swinfen.* The chair ought to keep us up to the things debated upon. The previous vote was first, and always moved as a direction to the Committee, be it grand or select. You ought to propose that first.

*Mr. Speaker.* I proposed if I should not, in the first place, put the question for commitment. Next, that the question, with the additions, should be put. It is hard to know your sense.

*Lord Lambert.* You are right. The proper question is for the commitment.

*Mr. Solicitor-General.* Every man agrees that it shall be committed. So that your proper question is the previous

vote. The debate has been upon it, three days. If this House be in possession of the power, I wonder who is out of the possession. You are ready for a question. It is natural to put that question first.

*Sir Henry Vane.* I suppose you will have no Committee. If you pass this question, what do you leave for your Committee? This is begging the question. It is seldom but the House will trust itself. You need no preliminary vote. From a Grand Committee you refer it to yourself. This is not ingenuity, to surprise in this question. The whole depends upon the Recognition.

*Sir William Wheeler.* I would not have three days' debate lost; but propound the question, and let every man speak to the wording of it, as he pleases.

*Serjeant Maynard.* There is no rule that the question which is firsted and seconded shall be the question. Then it would be easy for two or three members to lead the whole House; but the question must be put upon what was debated.

*Colonel Terrill.* I move that the question be stated and propounded, before you put it.

*Sir Arthur Haslerigge.* The proper question is, that it be committed. You were exceedingly in the right, as you are always. You put us in that way. I believe other gentlemen have not spoken, and will speak yet. I see it is late. Three days have not been ill spent. This is not the way to your own safety, to sit so late. Peradventure, forty or fifty more would speak. I would have this debate adjourned till to-morrow.

*Mr. Attorney-general.* Will you have a Committee, to debate whether you will have a Protector or no? Let the question be propounded. That were the most ingenuous.

*Colonel White.* I find many members remember the first, and not the last part of the oath.* I hope we shall remember

* "The preservation of the rights and liberties of the people." See vol. ii. p. 297, *note*.

all. I would have the question propounded, and adjourned till to-morrow.

*Mr. Salway* and *Sir Arthur Haslerigge* moved for the words "and not otherwise," to be added.

*Mr. Neville.* We agree him so, in fact, that he is Protector; but let us not say so: but that he shall be. This is a previous vote, and no part of the Bill.

*Mr. Trevor.* I move to propound the question, and to adjourn till to-morrow; and that the question be the subject of the debate.

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*Thursday, February,* 10, 1658-9.

I came not till ten, and the House had been an hour in debate whether there should be a previous vote.

*Sir Arthur Haslerigge* and *Sir Henry Vane,* and others, strongly urged that the proper question was for commitment.

*Mr. Bodurda.* Let us not defeat one another. If any question intervene, every man may speak again. I move that we be ingenuous one to another, and not exclude our votes. Every man agrees that it should be committed.

*Mr. Knightley.* I never knew commitment to lose a bill. A man may lose his life by commitment. I am against the previous vote.

*Mr. Trenchard.* There is a great difference between a previous vote and part of a Bill. I would have the previous vote, first.

*Mr. Trevor.* I find that either a Bill is so bad that it is incapable of amendment, or so good that it needs none; and so may go to engrossing; or else there are some faults in it, that it stands in need of some amendments.

*Mr. Hewley.* You differ about the method. Why need we be so nice? I cannot speak to the orders of the House, but to right reason. It matters not which question goes first. You are master-builders, and may lay which stone you please, first.

I see the doctors differ as to the orders of the House.

*Colonel Birch.* If the question pass for commitment, then all the debate is excluded. The meaning is, to lose three days' debate, if not the Bill.

*Mr. Scawen* and *Mr. Hungerford* never knew a previous vote upon the commitment of a Bill. First commit it, and then give your Committee directions, as most agreeable to the orders of the House.

*Mr. Fowell.* The debate has always been upon the words standing. If you agree not to this, I am against committing it. In all your Bills formerly, in all Bills for money, you ever agreed for the sum and time of payment, before you committed it.

*Mr. Francis Bacon.* Your first vote must needs be, whether you will have a Protector, or not. If the question be carried for a Committee, two or three days will be spent in debating whether it shall be a Grand or Special Committee. I doubt it will breed danger abroad.

*Lieutenant-general Ludlow.* I move against the previous vote. I would not have us capitulate with them. I dare not well trust them.

*Mr. Starkey.* I move for the words to stand in the Bill.

*Mr. Scot.* *Qui bene distinguit, bene docet.* True, a previous vote is proper upon a first reading; but not on a second reading, in the case of money, as is moved. It is moved by Mr. Francis Bacon that you swallow it without a debate, either in a Grand or Private Committee. The proper question and best way to come to a right understanding is, to commit the whole.

*Colonel Fielder.* This question was propounded yesterday. I would have it now put, whether it shall be put.

*Mr. Chaloner.* If you agree to this, there is nothing left for your Committee to debate upon; unless a little about the House of Lords.

*Mr. Speaker.* It is hard for me to understand your sense. All agree about the commitment. If this were a previous vote of itself, then it were another thing; but if you mean

this shall be a part of the Bill, then it will be part of the Bill. There are divers exceptions against the Bill, in the words, "lawful successor," and the like.

*Mr. Knightley.* Let both go together. If you pass this, you pass the whole Bill. Divers young gentlemen came here in 44, and said they had been at two hundred Bills, and never saw one.

*Sir Henry Vane.* You ought to direct us that the commitment should be first.

*Mr. Goodrich.* Here are two questions on foot; one for commitment, and another for the previous vote. Out of these results a third. Which of these questions shall precede? Pray put it, which shall be first put.

*Mr. Disbrowe.* I never knew it, that a previous vote was denied. I would have the arguments answered. If the question be for commitment, why may not all speak over again, to direct your Committee?

All those reflections on former Parliaments might better have been spared: better have covered your fathers' nakedness, for so I must honour them and call them.

Put the question, whether you shall put the question.

*Mr. Pedley.* You have a natural and a collateral question. It cannot be denied but, sometimes, the collateral question may precede. It has been always expected we are to put a question for a natural question. I would have the question put, whether this collateral question shall be first put.

*Mr. Neville.* It appears to me that as great a sense of the House is for the natural question.

*Captain Baynes* and *Mr. Weaver* the same. Many things were done precipitately, in the five months' Parliament; but always, in that, the natural preceded the unnatural.

*Major Ashton.* This question has received many names. I wish the unnatural name had been spared. My reason why the natural question should not be put, is, because it would unnaturally destroy the other question.

*Mr. Steward.* I cannot well distinguish between natural and collateral. I suppose they may be both natural ques-

tions. It is very natural that before the first question be put, the collateral should be decided.

*Mr. Reynolds.* It is time that makes a prescription. I wonder how gentlemen can prescribe from 54. I have not spoken to the merits. Let this question be put for commitment. You have but one question before you, naturally, and put the next question, afterwards, when debated.

*Mr. Hoskins.* The proper question is for commitment; but I never heard but other questions may intermeddle. Else how came the debate? Nothing so usual.

*Sir John Northcote.* I am sorry to see time squandered away. When a Bill is but in the question, it follows naturally for commitment, and to give directions to your Committee. A previous vote never came; but always before the Bill came in. You must needs put the natural question.

*Mr. Hewley.* I would have neither question precede; but that they may be both put together.

*Mr. Fowell.* You turn the other question out of doors, if you put that.

*Mr. Knightley.* The natural son ought always to precede the adopted son. He that will ask me nothing, shall have nothing from me.

*Mr. Stephens.* Jealousies amongst ourselves are the cause of all this delay. Putting the natural question will be most proper, but if that pass in the negative, I doubt you will put a bar upon yourselves, as to the other.

*Serjeant Seys.* I thought to have sat still, and served, but as the members find such differences—(used the words "ill-word, folly," &c. which was improper).

If the question pass for commitment we are locked up. It is most fit to put the previous vote, before the Bill is committed.

*Lord Fairfax.* I move that the question for commitment be put.

*Mr. St. Nicholas.* There was a great deal of time, before that proposition grew up to a question.

*Mr. Turner.* I have sat in three Parliaments, yet would

not venture to speak to the orders of the House, but that some that never saw a Parliament before, speak to the orders. In the turning of all the Instruments of Government that we have been under, there were always previous votes. We differ not in the substance, only in the *modus agendi*.

*Mr. Barnham.* It is your duty to put the question for commitment, though all and every individual of this House were for the other question.

*Mr. Jones.* You may divide any part of the Bill here. It will be no way inconsistent to your Bill. The proper question is for the previous vote.

*Mr. Jenkinson.* The natural and proper question is for commitment.

*Mr. Nathaniel Bacon.* It was moved to debate it in parts, beginning at "Be it enacted." If you determine not this, you will commit it to a Committee that can do nothing with it. All the preface may be mended. The substance lies in two lines, in the latter end. Without this question I shall be against the commitment of the Bill.

*Mr. Manley.* I hear nobody deny the single person to be fitted to be Protector. Why need you then refer the question to a Committee?

*Mr. Speaker.* I cannot yet see that the previous vote is fit to be propounded. Two questions are before you, whether the previous vote, or the commitment.

*Sir Henry Vane.* He mistakes the two questions:—

1. If the Bill shall be committed.

2. Whether that question shall be put.

*Mr. Trevor* and *Serjeant Maynard.* If either of those questions be put, I am deprived of my vote which way soever I give my vote, either to hazard the casting out the Bill, or to lose the debate. Let us not lose our ingenuity in surprising one another into a question. The debate has been soberly carried on hitherto.

*Lord Lambert.* The general sense of the House may be put, yea or nay. The Bill shall be committed, for any thing that is said; no votes shall be lost. There may be a great want of ingenuousness on the other side. I believe if this

were referred to a Committee, I would be so understood, that those that would now give their affirmative to the previous vote would then give their negative to it.

*Mr. Speaker.* It is very natural to put the question, if this shall be part of the Bill.

*Lord Lambert.* Upon the second reading, you cannot speak to any part of the Bill; unless for rejecting it or committing it.

*Mr. Solicitor-general.* You may speak to any part of the Bill. It is not so natural to commit a Bill. You may pass a whole, or any part of a Bill. If this question be too great for us, it is too great for the Committee. So that clearly it agrees with the orders of the House to pass any part.

I hear some except against the style,* that it is not grave enough, or so Parliamentary. This is the work of the Committee. I am excluded of my vote if the question be for commitment; but the other question every man is free to affirm or deny.

*Sir Walter Earle.* I have seen it done ten times; a previous vote after a Bill has been engrossed. I would not have men to speak four or five times.

*Mr. Reynolds* and *Mr. Knightley.* Any gentleman may speak to the orders of the House as often as he pleases. Sir Walter Earle moved expressly against the orders of the House.

*Sir Henry Vane.* It seems it is long since any Bill passed regularly. At the first reading no man can speak for a Bill; but against it, he may. At the second reading he may speak for, or against it, that is, against any part of it. The natural orders will preserve you from rocks. In times when we had kings, the House was surprised by previous votes. Our ancestors foresaw the necessity of committing a Bill. You have not touched the question, if the question shall be put for commitment.

*Mr. Attorney-general.* I have always observed the rule that what was the most agreeable to every man's sense was

* See *supra*, p. 130.

the natural question, not to exclude any man's vote. I think it too great for your Committee. I would have that question put which may save our time.

*Colonel White.* It is expedient to determine the debate. Some say, *per* orders, the question; some, of another mind, propose this, whether the House will take into consideration a previous vote, before the commitment.

*Mr. Knightley.* I like the question well, for an expedient; but doubt it will be dangerous to skip over the orders of our ancestors, in Queen Elizabeth's and King James's times. I have read journals before I was a Parliament man.

*Sir John Maynard.* If you cautionate it so that the previous vote shall be upon what is debated. By those intervening votes, I have often known the whole debate turned aside, and both questions lost.

*Sir Arthur Haslerigge.* I hope we shall have ingenuousness on both sides, not to be jealous of one another. If I surprize any, I desire never to be heard again. If I see any serpent under the green leaves, I will pull off the leaves, though never so flourishing.

*Mr. Bodurda.* I observed Sir Henry Vane. He contended not for the precedency; but for the dangerousness of the other question. I think it, on the other side, necessary that you put no question that may put out of doors a question of this concernment. This gentleman did move that the debate go on upon this negative debate. I desire the question be, that a previous vote, in order to this debate, shall be first put.

*Sir Henry Vane.* I agree that the question may be, if a previous vote shall be before commitment.

*Mr. Knightley* and *Mr. Reynolds* moved that a question should be put for a previous vote, to be before the Committee be named.

*Sir Walter Earle.* That question is improper. You are, part, for a previous vote before the Committee be named; and you know not whether you will have a Committee, or not.

*Mr. Godfrey.* I agree this is impossible. I would have

the question: if a previous vote upon the matter debated shall be put, before the Bill be committed.

The question was proposing.

*Sir Henry Vane.* Those that were naming a Committee should be against this question. (Query, if ingenuously moved?)

The question being put in the affirmative;—

*Lieutenant-general Ludlow* stood up, and pressed that the natural question might be put, for commitment.

The question being put, whether this House will take into consideration a previous vote touching the matters here debated before the Bill be committed. The question being put if that question shall be now put, it passed in the affirmative.

The main question being put, it passed in the affirmative.

The House rose at almost three.

The Committee of Privileges sat in the Star Chamber. Serjeant Waller in the chair.

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*Friday, February* 11, 1658-9.

*Mr. Speaker* took the chair almost at nine.

Mr. Cooper prayed.

Dr. Burges's book* was delivered at the door, touching the sale of Bishop's lands.

* "A Case concerning the Buying of Bishops' lands, with the lawfulness thereof; and the Difference between the Contractors for the Sale of those Lands and the Corporation of Wells." Prefixed, is an address, "To the Parliament of England," signed "Cornelius Burges, February 9, 1658-9."

Dr. Burges was beneficed at Wells; performing, (p. 62,) "more service in that Church, than any Bishop that ever sate there;" he had been "Chaplain to King Charles, in 1627," but "was afterwards much vexed in the High Commission Court, for opposing the *Laudensian* faction." He became "a frequent preacher before the Long Parliament,"

*Colonel Morley* stood up and made his election for Sussex, and moved that a new writ may issue for the borough of Lewes.

by whom "he was fixed in an evening lecture at Paul's, with a pension of 400*l.* per annum;" though he had "argued against imposing the Covenant, and refused the taking of it, till he was suspended: but having once taken it, he thought himself obliged to keep it." In 1648-9, he drew up, and first signed, as "Preacher of the Word in Paul's, London," the protest of fifty-seven Presbyterian royalist preachers, against "the bringing of the King to capital punishment," to which I have referred, (vol. ii. pp. 320, 449.)

Just before, January 14, he had "preached a sermon at Mercers' Chapel, in which he, with great freedom, inveighed against the design that was then on foot, of taking off the King, and feared not the consequence." See Dr. Calamy's *Account*, (1713,) ii. 586; *Continuation*, (1727,) ii. 736—745.

Lord Clarendon, on the Bill, in 1641, "to take away Bishops' votes," says, "without doubt, the Archbishop of Canterbury had never so great an influence upon the counsels at court, as Dr. Burges and Mr. Marshall had then upon the Houses." *History*, (1705,) i. 302. May 12th, 1641, the very day of Lord Strafford's execution, Dr. Burges, according to *Rushworth*, made, at the bar of the Commons, "a large answer," to "a learned oration" of Dr. Hacket, Chaplain, and afterwards the biographer of Archbishop Williams, "in behalf of Deans and Chapters. The further debate was adjourned; only the Commons voted that all Deans and Chapters should be required from the House, to suffer the inhabitants of the places where their cathedrals are, to have a sermon preached in them every Sunday, in the afternoon." *Hist. Col.* (1708,) iv. 91, 92. See *Parl. Hist.* (1763,) ix. 322—324.

Now, addressing "the Parliament," Dr. Burges having mentioned "the death of the late Lord Protector," seasonably compliments "his present Highness, *gentis Anglicanæ nunc deliciarum*," denouncing "quacksalving spirits," and their "new models of government," such "turbulent polypragmatists" as "will never be for any settlement at all." Thus he introduces his *Case*, the second part of which is on his dispute with the Corporation. In the first part, he repels the charge of sacrilege; largely and learnedly contending, (p. 7,) "that tythes are the proper maintenance set out by God for the ministers of the Gospel, and cannot be alienated without sacriledge;" but, "that there is no warrant in scripture, for the giving of lands to Bishops, and therefore it cannot be sacriledge now to alien them." Then, after censuring "Dr. Lindsey," who had "styled Bishop Usher, for his often preaching, *animalculum prædicabile*," and praising that Bishop at the

*Mr. Fagge* made his election for Sussex.

*Mr. Knightley* moved the like for Higham Ferrers.

expense of unpreaching prelates, Dr. Burges thus diverts the war into the enemy's country:—

"Even they, who now cry loudest against buying Church-lands, because once dedicated to God, and make it high sacriledge in others, can yet be content and quiet to hold things of the same kind, in respect of dedication heretofore aliened from the Church. They can digest abbey-lands, canonical-houses, yea, (which is worst) appropriations of tythes, first made by that arch-thief, the Pope, in favour of monasteries, and after their dissolution, devolved to private hands and common uses, as Bishops' lands now be.

"How many nobles and gentlemen, who now cry sacriledge against many purchasers, do possess many lands and manors of Bishops, alienated since Henry VIII. began to destroy monasteries; many of those lands being, by secret compact, between petitioners for bishopricks and their friends at court, exchanged, or otherwise aliened from the Church, upon condition to get such a bishopric for them. If any doubt it, it is his ignorance." Dr. Burges then gives the names of nineteen manors "alienated from the Bishopric of Bath and Wells, before ever the late Parliament seized the rest; and are held by laymen, to their own private uses, without scruple or blame.

"Let not such think to wash all off, by saying, 'these were things done before their times, which they could not help;' for they can, without scruple, enjoy, yea, purchase them. An accessary in sin long before committed, must share with the principal in punishment: and this all acknowledge to be a truth; *non firmatur tractu temporis, quod de jure ab initio non substitit.* No house will grow strong by long continuance, whose foundation is on the sand. They, therefore, that thus censure him, are themselves inexcusable."

Dr. Burges lost, of course, in 1660, his lectureship at Paul's; and in 1662, he was ejected from his benefice at Wells, with "a wife and ten children." He now "lived privately, and was reduced to straits, having laid out all he had in Bishops' lands, which, upon the Restoration, was entirely lost. He died in 1665."

Having been educated and taken his degree in divinity at Oxford, *Wood* has given him an article of some length, and (though the Doctor would have spared the King,) of no small virulence. He has not, however, forborne to mention, that "about three weeks before his death, he sent certain Common-Prayer Books to the public library at Oxford." These, besides the edition of 1663, were the two editions of *Edw.* VI., and that 1. *Eliz.*, "which book," he says, "is very hard to be had," so that he "could never see any other of that edition." On

The order of the day was read, touching the debate adjourned yesterday.

*Mr. Hoskins.* I would not look back but with relenting, and never to come to it again. You now are looking forward.

(He stated the debate, which he interrupted with a long discourse, touching the orders of the House.)

If there had been any doubt who was Protector, after the death of his late Highness, we had been under no great inconvenience. I understand that many minds doubt it; but the reason I know not. I am not against the indorsement upon the back of the bond,* but not for the limitations, now. You are now upon a title. You will not have foreign princes address to his Highness as Protector, under such limitations and qualifications. I would have the words of limitation left out.

*Mr. Forwist.* If I had questioned his Highness being Protector, I had not been here. I have sworn to it, and hope I shall defend it. I suppose we are under three estates, a single person and two Houses of Parliament.

My motion is to leave out the limitations.

*Mr. Reynolds.* I am 1. Against the title. I cannot swallow the Bill. I understand not the word "recognition."

2. Against the words, "lawful successor."

The first argument is the Petition and Advice, it was done by force. The House was divided, upon the question, fifty-

the title of that, 2 *Edw.* VI. (1549,) he had written, "This is one of the very first Books of Common-Prayer, in the beginning of Edward VI.; which book, at the request of Archbishop Cranmer, was reviewed and censured by Martin Bucer, and then reformed accordingly, in 5 *Edw.* VI., which latter is the book still in force by the statute, 1 *Eliz.*" On "a spare leaf," Dr. Burges presents these books to his "dear and much honoured mother, the renowned University of Oxford;" concluding: "all these I most humbly and thankfully give to my said honourable mother of Oxford, (I being ready to die) beseeching her to account of these four small mites, as our Lord and blessed Saviour did of the poor widow's two mites, that by casting in that, cast in all she had." *Athen. Oxon.* (1692,) ii. 235—238.

* See *supra*, p. 191.

three affirmative, fifty negative.* That to the manner of it. To the matter. The seventh article looks very black: like the Trojan horse, an army in the belly. Where did you provide for an army? You bind an army on the back. One of the estates are mostly officers;† and so we shall have an army entailed upon us, by having the revenue entailed.

The second argument is, that not to recognize will shake the sales, &c.

I answer, when a Parliament, under a force, doth a just and right thing, that matter will be trusted to a rightly constituted Parliament to confirm. Here was constituted *per* question, a buyer and a seller. I bought some lands myself, but was sent for. The contractors said, that if some of us did not break the ice, none would contract. There was an ordnance, of Lords and Commons, that if they did not contract presently, all should be lost. This was hard. I offered 500*l.* to take the bargain off my hands. I thought to have paid the whole sum in ready money, 8,000*l.* If I paid it in ready money, the officers would have the benefit of it. Then I bought bills at 95*l.* per cent. to sink the public debt, out of my service to the public. This was an unjust temporary law, made by a Parliament under a force, not well pursued.

An acre of land cannot pass without such a nomination as Westminster-hall and the law will allow of. It must be legally proved.

We must have a recognition, and yet, no debt, no title, no interest appears. I would have it amended in the title, and instead of acknowledge, say declare, and establish that he is Protector.

*Mr. Fowell* took him down.

*Mr. Reynolds* stood up again, and said he should not be taken down.

Now, to the previous vote, whether it shall relate to the Acknowledgment of the single person only, or take the people's rights in with it.

* See vol. ii. p. 119, *note**; *Journals*; *Parl. Hist.* (1760) xxi. 128.

† See vol. ii. p. 450, *note*.

In the beginning of the Long Parliament there were two Armies. We had passed an Act for raising money. All people were privileged to become security, till the money was raised. This appeared great fidelity to his Majesty, by pulling the thorns out of his feet which had gotten in. He laboured to seduce that Army. Young Lord Goring* came to the bar and said: "the Queen sent for me into the King's lodging, and asked me: 'are you concerned in that cabal?' 'No,' said I. 'Then go, join with Jermyn and Piercy, and bring up the army against the Parliament.'"

In those debates men sat in the gallery, and as soon as ever they could get out, ran to the court, to tell tales and misrepresentations to the King, as soon as ever twelve o'clock came.

Misfortunes, too, came from our friends. Divines,† that

* See vol. ii. p. 443. *note.*

† The Assembly, (see vol. ii. pp. 333, 334, *notes,*) where a powerful ascendancy was maintained by the Presbyterians, among whom had survived the spirit of the Star-Chamber and High Commission; and of their favourite theologian, Calvin: the Independents, though generally adopting the theology of Calvin, having happily rejected his doctrine of persecution.

That reformer, not otherwise inhumane, in the arrogant and merciless spirit which has fixed on his memory the indelible disgrace of betraying Servetus to the stake, and then glorying in the atrocious deed, addressed a letter of counsel, in 1548, to the Protector Somerset, who was reigning in the name of Edward VI. He denounces to his correspondent two sorts of troublesome people in England, *Gospellers* and Papists; thus consigning both to the magistrate's sword: *gladio ultore coerceri quem tibi tradidit Dominus.*

There is a fine contrast supplied by Castalio, in the dedication of his *Biblia Sacra* to Edward VI. That accomplished scholar, who, as a liberal theologian, became an object of Calvin's bitter hatred, having referred to the instructive parable, which, it might be supposed a Christian persecutor had never read, adds, in a style of sentiment probably singular in that age, and, like a Pythagorean scholar, adducing the authority not to be disputed;—"Obediamus justo judici, et zizania usque ad messem sinamus, ne forte frumentum (dum supra magistrum sapere volumus) extirpemus. Neque enim adhuc ultimus mundi finis est: neque nos angeli sumus, quibus hæc sit mandata provincia." *Bib. Sac.* (1726,) pp. xi. xii. (Let us obey the righteous Judge, and leave the tares till the harvest, lest, while we would be wiser than the

we ourselves had called together, were the occasions of the first breach in this House.

The House set up the Presbyterian Government in great might* to please them. They excepted against the Act that

master, we destroy the wheat. Neither is this the end of the world, nor are we the angels to whom that province is committed.)

For the intolerant Presbyterians of the Assembly, by whom the Long Parliament was urged to violate the dearest human rights, there was reserved a just retribution, under the Act of Uniformity, in 1662; when "with what measure ye mete, it shall be measured to you again," was strikingly exemplified in their experience; though they have been too often described as innocent sufferers. They had, indeed, reason to complain of the faithless Stuart, with the promise of whose favour they encouraged and assisted Monk, to betray the best interests of their country: yet they were visited in their turn, only according to the principles and conduct they had displayed during the short period of their ecclesiastical ascendancy.

The English Presbyterians of the present day happily inherit nothing but the name. Of this many of them would gladly be deprived, as no longer applied with any propriety.

* The Directory. April 26, 1645. See vol. ii. p. 68, *note;* Scobell's *Acts*, (1658,) pp. 75—92. This was enforced, August 23rd, by the following invasion of that right, essential to the perfection of civil government, the unrestricted exercise of religious profession:—

"And it is further hereby ordained, by the said Lords and Commons, that if any person or persons whatsoever, shall at any time or times hereafter, use, or cause the aforesaid Book of Common Prayer to be used, in any church, chapel, or public place of worship, or in any private place or family, within the Kingdom of England, dominion of Wales, or port or town of Berwick; that then, every such person so offending therein, shall for the first offence forfeit and pay the sum of five pounds, of lawful English money; for the second offence, the sum of ten pounds, and for the third offence, shall suffer one whole year's imprisonment without bail or mainprize." *Ibid.* p. 97.

*Blackstone* justly censures this cruel legislative interference, especially with the sacred privacies of domestic life. Yet he has sanctioned the spirit of the whole, by adopting, (b. iv. ch. iv.) that common-place of Christian persecutors, the *dictum* of Judge Hale, so degrading to the divine religion of the Saviour, that "Christianity is part and parcel of the law of England."

From the following report by *Rushworth*, it appears that some citizens were disposed to treat with deserved neglect this persecuting ordinance:—

it had not taken notice of their intrinsical power, that it was *jure divino*, from the apostles. For all this they preached up and down; and said we invaded the civil rights, and suffered heresies and blasphemies to increase.* We were blamed for

"1647. Dec. 25. Complaints being made of countenancing malignant ministers in some parts of London, where they use the Common-Prayer Book, contrary to the ordinance of Parliament; and some preaching on this day, because Christmas Day; [See vol. i. p. 229.]—the House ordered the Committee for Plundered Ministers, to examine and punish churchwardens and others, who countenance delinquent ministers, and to commit them, if they see cause: upon which some were taken into custody." *Hist. Col.* vi. 323.

* Besides their persecution of individuals, especially *Biddle* and *Best*, (see vol. i. pp. 57, 65,) the Presbyterian clergy were instigators of that *draconic* ordinance, as it has been justly called, which passed May 2, 1648, (just on the revival, in the Parliament, of the Presbyterian ascendancy,) "for punishing blasphemies and heresies."

Whoever, "by preaching, teaching, printing, or writing," should "maintain and publish" atheism, deism, or any of the forms of anti-trinitarian Christianity, "and not abjure his said error," was condemned to "suffer the pains of death, as in case of felony, without benefit of clergy."

The same penalty of death was incurred by denying the divine origin of any one of the books of the received canon of the Old and New Testament, which are all enumerated in the Ordinance. Thus a learned theologian, however orthodox on every other point, should he indulge the opinion, that "the Song of Songs" was an *epithalamium* of King Solomon, and "not the word of God," would be doomed to "the pains of death, without benefit of clergy." See Scobel's *Acts*, pp. 149, 150.

*Neale* justly denounces this Ordinance as "one of the most shocking laws, in restraint of religious liberty," which "shows that the governing Presbyterians would have made a terrible use of their power, had they been supported by the sword of the civil magistrate. The Presbyterians of the present age," he adds, (1735) "are not only thankful that the confusion of the times did not permit their predecessors to put this law into execution, but wish also, that it could be blotted out of the records of time." *Hist.* (1822) iii. 419, 421.

Dr. Toulmin, the editor of Neale, (1793) adds, with that just judgment which I well knew him to possess:—"The indignation which the liberal mind feels at the principles and spirit of those, who themselves recently suffering under the hard hand of intolerance, could frame and pass such a law, is somewhat relieved by finding that it did not pass without much opposition." See *Whitlock*, May 2, 1648.

all. You only sent a member or two to admonish and advise them.

The next unhandsomeness came from the apprentices.* There was a force upon the Parliament. Some went to the army, some stayed here. I went another way, but to my own house till the force was removed. An impeachment was brought in from the army, not from the army, but from a spirit in the army. Not so much as a relator allowed on those gentlemen's behalf that were excluded. They were forced to go out of the land to save themselves. Persons of honour they were. I could not in that time come near this House.

I had no hand in, nor heart for, trying the King. I scrupled it for divers reasons. 1. Because I feared the people should not have benefit by it, but that something should step up like it, through the iniquity of men. I was assured a thing like this was near at hand, coming upon us.

I came to the town, and was importuned to come into the House. I thought I might do some good. To take off free quarter, and excise of ale and beer was no ill deed; and, seeing I must sit here, I would keep as much of the people's rights as I could in this House. I was very pressing for that Act to dissolve ourselves. I never desired any earthly thing with more earnestness, to see that Parliament fairly dissolved, and another provided to built up what ———† The question being put to dissolve———† with a very loud *Yea*. This done, persons came to the door.‡ One came in and sweetly and kindly took your predecessor by the hand and led him out of the chair. I say, sweetly and gently.§ This was

* April, 1648. See *supra*, p. 108, *note*.

† Blank in the MS.

‡ See *supra*, p. 56, *note*.

§ See Sir Arthur Haslerigge's account, *supra*, p. 98. "The Speaker not stirring from his seat," says *Whitlock*, who probably witnessed the extraordinary scene, "Colonel Harrison, who sat near the chair, rose up and took him by the arm, to remove him from his chair, which, when the Speaker saw, he left his chair.

"Some of the members rose up to answer Cromwell's speech, but he would suffer none to speak but himself; which he did with so much

never known abroad, how near the Parliament that conquered others were to conquering themselves.

It gave me some satisfaction that it was hoped we should know our crimes.* Some continued in and advanced, and made me believe they were free. I wish there were an act to oblivion all these things. I could give an act of free pardon to all.

There has been a large field since. What imprisonments, and impositions on men's persons and estates; monies raised; high courts of justice! The hereditary lords never presumed to raise money. Hard choice; you must either levy money against the law, or make free quarter.

Since the death of the late Protector we have better hopes. I never had confidence to serve you, since the Long Parliament. We ought now to take care that we suffer not these things over again.

Now to the previous vote. I would have all remember the oath. There was great wisdom, prudence, and integrity, in framing that oath; to ligament the single person and people together. I shall express my faithfulness to him by giving him the best council I can. I will attempt nothing against his government. I will not consent to such exorbitant powers as that others should attempt upon him. I have in this performed the first part of the oath.

As to the second part, the liberties of the people. Is there any better way than to keep the staff in their hands: the militia; with an appeal to the lords, on oath, and a judgment for the people. I will stand by that judgment, *jacta est alea.*

arrogance in himself, and reproach to his fellow-members, that some of his privadoes were ashamed of it. All honest and prudent indifferent men, were highly distasted at this unworthy action.

"Thus it pleased God, that this assembly, famous through the world for its undertakings, actions, and successes, having subdued all their enemies, were themselves overthrown and ruined by their servants; and those whom they had raised, now pulled down their masters." *Memorials*, (1732) pp. 554, 555.

* See *supra*, p. 74 *note.*

I question if you will give that away again. If you give it by wholesale and beg it by retail,* it will not become the wisdom of the House. The negative voice would never be admitted. The formality of his denying a Bill: "The King will consider of it."† His oath awed him, he ought not, he durst not, deny a law. After you have passed this vote, he is, *de facto*, in possession, and then you are disturbed, and laws, and instructions for limitation are postponed till you meet here again.

I hear not one man against a single person: against *the* single person there is not one exception. Not any other man in this nation would pass so clearly. I have particular and personal reasons. I would venture my life rather than he should be in danger.

I have heard his late Highness with tears,‡ and knocking his breast in this House, say he would sheathe a sword in any man that should disobey an order of this House. We laid exceeding temptations upon him; impossible for a mortal man to bear. Lay them upon any man alive, and the same exorbitances will ensue. Can any rationally believe otherwise. It is the clear way to destroy him, to make his power exorbitant. I have heard great truths from every corner of

* See *supra*, p. 171, 172. † See vol. ii. p. 451, *note*.

‡ He appears to have possessed constitutionally the indispensable qualification of an actor in tragedy. Thus, on his behaviour at the interview between Charles and his children, in 1647, Mr. Godwin remarks, that "it was, by all accounts, one of the peculiarities of Cromwell's frame, whether the cause were bodily or mental, that he had always tears at command." *Commonwealth*, (1826,) ii. 360.

In some "particulars of Mrs. Bendysh," (the extraordinary granddaughter of Cromwell, by his daughter's marriage with Ireton,) communicated to Rev. J. Duncombe, it is said that "Mrs. B. gravely insisted, in a conversation with her friends, that Oliver was one day seeking the Lord with such ardour of devotion, and striving for a gracious answer with such vehemence of spirit, that the tears were forced from him in such abundance as to run under the closet door." See "Letters to Several Eminent Persons Deceased." (1773) ii. *Appendix*, xxxvii.

this House here spoke of the Long Parliament, with a great deal of honour. Mr. Disbrowe,* I honour him for that, be his opinion what it will.

From another corner, those addresses brought an evil measure to measure the people's affections by: not for his Highness's service: full of flatteries.† One came to my hands, drawn by a young minister, pretending to contain the sense of the whole country; that they would stand up to defend the good old cause with all that sat in the Long Parliament, and "for defence of your Highness's person and government."

I am glad to see truth come out of corners. Truth seeks none. In evil times we see truth is driven into corners.

I never heard any thing laid to Overton's‡ charge, but dissatisfaction that he could not say black was white, and all one. Another truth from another corner: clearing the army from the King's blood,§ that all authority is reverted to the fountain and original. It is my prayer that it may be there still: no family to be balanced with an interest of the people. A member‖ was sent out for saying so. This was in the beginning, but after, they saw its truth; and they, by a vote, adjudged what that gentleman said was true; else they would not have restored him.✝

* See *supra*, p. 196. † See *supra*, p. 161.
‡ See *supra*, p. 45. § See *supra*, pp. 173—176.
‖ "Query, Harry Marten," added in the MS.
✝ In August 1643, according to *Whitlock*, "A book set out by Saltmarsh, a minister, was denounced to the Commons," recommending, "among other his counsels," that "if the King would not grant their demands, then to root him out and the royal line, and to collate the crown upon somebody else.

"Some excepting against this, Mr. Henry Marten said, 'He saw no reason to condemn Mr. Saltmarsh, and that it were better one family should be destroyed than many.'

"Sir Nevil Poole moved that Mr. Marten might explain what family he meant, who boldly answered, 'The King and his children.' Upon this, some of the members urged against his lewdness of life, and the height and danger of these words. And divers speaking sharply against Mr. Marten, he was committed to the Tower." *Memorials*, (1732) p. 71.

Since Providence has brought us to this pass, that this right is devolved upon the people, let the people have some compensation. As long as there is a righteous God in Heaven, he will do it in due time. I pray we may speak aboveboard, as Englishmen. I love a man that will speak his thoughts from his heart. I would have this previous vote to have no future tense in it. I would have this vote a comprehensive noose, an entire vote. I desire that the Chief Magistrate may not only be chief, but the favourite of the Commonwealth. Let the vote be like the oath. It has linked them together, accursed be he that parts them.

As you say what he shall have, say also what he shall not have.

1. Not to dispose of the militia.

2. What laws they make shall have no negative from him.

I am persuaded in my heart, these things would please him well; if not pressed from some without doors, as in the King's time. The more power we can get for you, the more power and place shall we have. This would have contented the former Chief Magistrate. The King would have been content but for his council.* A maiden magistrate has not offended. He is as little obnoxious to Parliaments as any man.

With what applause came in the King, and in three years he lost the hearts of all his people by breaking Parliaments. He followed not the advice of Parliaments, but of his council.

"1645-6. Jan. 6. Voted that a former judgment against Mr. Henry Marten, of expelling him the House, should be void, and rased out of the Journal-Book, and Mr. Marten to enjoy the benefit of his first election. This gave occasion to some to believe that the House began to be more averse from the King. *Ibid.* p. 186.

The reverend author of the book which thus tempted Marten to a premature declaration, had found his doctrine to become less obnoxious, and appears to have now made his peace. Baxter, speaking of the army in 1646, says:—"Saltmarsh and Dell were the two great preachers at the head-quarters." *Reliquiæ Baxterianæ* (1696) p. 56.

* Unless referring to his chamber-council, the Queen, (see *supra*, pp. 93, 94), this is surely incorrect. No Prince was ever more his own minister than Charles, at least after the deaths of Buckingham and Strafford.

See the consequences. That will be the lot of all Chief Magistrates that will not esteem the love of their people, but are carried away by those that flatter for their own good.

This paper is not perfect. This House is not best at penning a question. Choose two or three to pen a question, to be the subject matter of the debate.

*Mr. Fowell.* Some of the Parliament-men are fitter for *repertare* than *repetiare*. I shall not tell you of the lands I bought.* I shall keep to the question.

We owe our peace, safety, happiness, and meeting here, to the power of nominating a successor. Else you had met many competitors.

It is objected that the Parliament was under force.† I answer, three hundred then sat in the House. Sixty were kept out and wrote a letter. They were persons of integrity. We did at last obtain it, that they might sit with us. There ought not to have been that reflection. There is a difference between force to some members and force upon a Parliament. If that make all laws void, that some of your members be absent, two or three Cavaliers may seize two or three of your members. What is done in Parliament, by another Parliament must be repealed. There was an Act, 31 *Hen.* VIII. to repeal an act of a former Parliament. You set up a court of wards; and purveyance,‡ and take away all the lands given to your soldiery by last Parliament.

I sat in the Long Parliament, and there was a force upon us. Three hundred § of us were hurried to prison. I will not say the Parliament were guilty; but they made an order to keep us out, and a Committee of Inquisition was appointed. I was examined, how I gave my vote. I said it was not parliamentary to discover how I gave my vote. I confessed I was against it. I did according to my conscience, and he is a knave that does not so. All public sales will be shaken.

The Petition and Advice is a law. His Highness is Protector by that Petition and Advice. If there be any defect

* See *supra*, p. 205. † See "Mr. Reynolds," *supra*, p. 204.
‡ See vol. ii. p. 437, *note*.
§ Probably an error for thirty. See *supra*, p. 106.

in the Trojan horse,* let it be mended. This is to give satisfaction to your allies abroad, and safety at home, that we should never come under the tyranny of a Commonwealth. I would have bounds; that he shall rule according to law: but to limit him, as you say, the conclusion denies the premises. If you had picked the world for a prince. He has given no cause of jealousy. Shall we deny subjection where we have protection?

*Mr. Knightley.* I came to this House with an Act of Oblivion in my mouth. I would have no reflection, but would not have it so peremptorily asserted that the Petition and Advice was made in a free Parliament. It is said, this House is a Grand Jury. If the Petition and Advice were arraigned, I should say *billa vera*, and find, guilty. There is a difference between force by two or three Cavaliers and pikes at the doors. One hundred and fifty members were kept out. There is a great difference about three Latin words, *quos populus elegerit*. I hope we are offering a better title than he has. Are we not all come to own him here? The judges own him. You have a bill,† make it not a hatchet or an axe to make some of us shorter by the head. It was stumbled on well by a learned gentleman, the Petition of Right. I would have us petition and right rather.

That Richard, now Lord Protector, be the Chief Magistrate of these three nations, that he ought to govern by laws, and such laws as the people shall think fit to advise him by:—I would have such a question agreed on.

*Captain Baynes.* We are all agreed that his Highness shall be Protector, and if it had gone to a Committee, I think you might have been at an end of your question before this.

The Bill brought in, makes the Government hereditary. It gives him an absolute power, and acknowledges him the rightful successor, which we know not, and are ignorant of. I hope he is nominated according to the Petition and Advice.

* See *supra*, p. 205.

† The name of "an edge-tool used by husbandmen to top trees."

Yet I would have a previous vote, that his right and title be made out, and that he have it from this House; such a question to which there may not be one negative.

The Petition and Advice, which is his foundation, wants a foundation itself. It was brought in irregularly, against the orders of the House, to alter the Government, by a gentleman that found it by the way as he came from Lord ———.* It was read afterwards in parts, (there was no Committee), and passed in parts, and never read the third time; but engrossed and passed, and carried to the Protector, who did not accept it, because of the title of king.

The House did adhere. A Committee was appointed to convince his Highness to accept the title. His Highness brought in a paper;† if he was satisfied in that, he would not make a bargain to accept the title, but would do honest things. This brought forth a supplement to the Petition and Advice, and loose papers were afterwards presented to the Protector for his satisfaction; yet, the title being in, he rejected it. It was then moved in the House, that it might be amended with erasures, and the fifteenth article, where was a clause concerning the king, not presented. It was urged against it, that it could not be amended but by a new Bill. The fifteenth article unprinted, has the title of King still in it. Looser papers were engrossed, and passed in an additional Petition and Advice.

There are many other defects in the formality of passing that law. Therefore it is not good to look too far back, but to look forward, and to make him what he will be, not that he is, or is rightfully, but that we intend to make him. I desire that it may be your Act to make him Chief Magistrate, to give him a legal title to what he enjoys *de facto*. This must be a distinct clause of itself; not to depend upon the Bill.

I have heard much of his virtues and his deserts. I do honour him; but he cannot always live. It is an unhappiness

* Blank in the MS.

† Probably "the paper of exceptions," vol. ii. p. 7.

oftentimes or the people to have a good Chief Magistrate. The love and indulgence of the people fail to guard that which after becomes a snare. Let us set the Government so, that the worst of men cannot hurt us. The worst kings have produced the best laws, and the worst have been made under the good. Though a good man's hands be tied, you may loose them when you please.

I am not willing, nor free to trust him with your militia. I speak plain. The army will be an overbalance. Settle the Government as you please, in Lords and Commons, &c., but the revenue constant, Excise and Customs perpetual: these powers are not fit to be put upon a free people. I shall speak to that in its proper place.

You have the purse, he the sword; but his sword may soon take your purse. I would have no more high Courts of Justice, Major-generals, or imprisoning men's persons, unless for a little time, till a *Habeas Corpus*.

I would have the militia the first question, or at least to go hand in hand with it. I hope you will not establish a negative. I suppose you will have a House of Lords, or a Senate.* I shall not oppose it, if such as may, intrinsically, be a balance on their own footing, without any dependance upon the single person, if you can find such; that the single person may have no negative upon the two houses. It might be well enough to petition for laws when the people's interest was small, but now when they have got all the interest and property of the Three Nations, there is no reason. When the King and Lords had two thirds of the property, the case was otherwise.

I move, that he may be Chief Magistrate, reserving the militia and negative voice. If these three particulars all go together, I shall consent. Otherwise I shall not consent to it. Let some gentleman withdraw, to pen a question to this purpose.

*Mr. Steward.* You ought to admit the Petition and Advice to be a law, else you strike up your own heels. You have no other foundation. I shall not ruminate, but look

* See *supra*, p. 148, *note* *.

forward. I shall make it appear that the Parliament was absolutely free, and freer than the Long Parliament. I had as much dissatisfaction in keeping the members out, it was *damnum absque injuria.*

Two things are necessary; an election; and an approbation, if it be made a *sine qua non*, and fundamental to the election. If those gentlemen had not been kept out, they ought to have been restrained by their own judgment. It was essential, their approbation.

1. As to nonformality. You must not presume that if a Parliament wanted formality, the consequence would be dangerous.

2. As to the disposal of the militia. It is indifferently well ordered in the Petition and Advice. You may perfect it in any thing. As to danger in trusting the Chief Magistrate, it is not in the power of any man to prevent faults in all government. It is necessary, and puts us upon Providence to defend ourselves. I would not leave a negative, to oppress the people. Yet if he have no deliberative vote,* he is the most unfortunate man in the world. We may have *Parliamentum indoctum* or *insanum.*† The single Magistrate may have nothing left to defend himself or the people by. If you take consideration of all this, you will make yourself matter for two months' debate.

*Major Beake.* I was exceedingly glad that the two gentlemen did move and second so warily as to take in all the sense of the House. We have a *substratum*, out of which to form a question. The word "undoubted," exceedingly qualifies the nature of the question. The word "lawful," would have run to the modifications of his title, and answers all ends; for some say he is in *de facto*, others, *de jure;* but whether *de jure* or *de facto*, he is undoubtedly so. It is offered, for something to be added. You must put it to the question, whether that shall be part of the question. It was moved from the bar, "let the rights of the people go hand in

* See "Massachusets," and "the Abbé de Mably," vol. ii. p. 460, *note.*
† See vol. i. p. 252, *note.*

hand."* The rights of the people are of precious concernment. I hope you will never bespot so precious a jewel. If all the world were paper, and sea, ink, they could not express liberty, what it is. Some liberty is licentiousness, as some prerogative is tyranny. I hope, in their proper places, you will bring these things into debate. You will never part with what is essential to preserve the people's rights; but if you put off this question of settlement till all these things be agreed on, you will hear of things without doors. If you never pass the vote, till all things be settled, I am afraid you will never do it. Thus you will deny what you swore. Then the argument from out doors will be: you are undoing that which they thought well done. My motion is, to repeat the question without the limitations, that this House doth declare that his Highness is undoubted Lord Protector, or Supreme Magistrate of England, Scotland, and Ireland.

*Mr. Scot.* I acknowledge this person is Chief Magistrate; but the word "undoubted," is a doubt with me. The argument used against those that say fire does not burn, is, put your fingers in. Were not pikes at the door to keep us out? It was proved. I cannot admit that a free Parliament. The Petition and Advice was not pursued. If the nomination appear not to you, you cannot go upon that. The Parliament have suffered entails upon the crown; but this has been done before the Judges and Council, and publicly. This Government is but *de bene esse.* The kingdom of England was not always hereditary. Of twenty-five or twenty-six Kings, fifteen or sixteen of them came in by the choice of the Parliament, and not by descent. Among the rest, King Stephen, Richard II., Edward I. The Parliament has always power to make or empower the Chief Magistrate, and they changed the Government as often as they thought it good for the people. As to the instance, the last King, I was at his coronation.† At every corner, every society was asked,

* See "Lord Lambert," *supra*, p. 191.

† Feb. 2, 1625-6. "He was crowned at Westminster," says *Lily*. "William Laud altered the old coronation oath, and framed ano-

will you have this person for your King? This implies a power of the people; though he was so, before, by succession. As to the oath made without doors, I find myself free here. You may remove the Chief Magistrate, and make whom you please so. In Henry VI. and Henry IV.'s time, the election was from the people.

A second authority is from the practice of God's own people, *Deut.* xvii. 14. "When thou shalt say, I will set a king over me." Samuel, as good a magistrate as ever was in the world, asked, "Whose ox or ass have I taken?"* In his time the people would have a king.† The people chose him; though God specially designed him.‡ You have a people that have declared this honourable and very precious person, with the acclamations of towns and villages. If the whole body had done this in a collective aggregate body, met in any place,§ you ought not to question it; but this is but from some parts, in their several scattered bodies. You refuse addresses of this kind.

ther new." See Maseres's *Tracts*, p. 148; Harris's *Lives*, (1814,) ii. 198—207.

"Bishop Laud," says *Rushworth*, "delivered to the King, Edward the Confessor's staff, and the Archbishop of Canterbury presented him to the people, who gave their consent. Afterwards, he was conducted to the throne, and an exhortation was read to him," (by Bishop Laud) "that he should stand and hold fast the place delivered to him by the authority of the Almighty God, and by the hands of all the Bishops and servants of God: that as he saw the clergy come nearer to the altar than others, so he should remember that, in all places convenient, he give them greater honour, that the Mediator of God and man may establish him to be a mediator between the clergy and the laity." *Hist. Col.* (1703,) i. 129, 130.

A modern writer has assigned some uncourtly reasons, "why the members of the Lower House are not summoned to appear at a Coronation;" and while "the slavish, barbarous ceremonies of the feudal system are religiously observed, the King swears to maintain the rights and privileges of the people, not before their representatives, but before the nobles and his own servants." See "The History of the Reign of George III." (1770,) pp. 77, 78.

* 1 *Sam.* xii. 3.

† *Ibid.* viii. 5.

‡ *Ibid.* x. 24. See vol. ii. p. 391, *note* ‡.

§ See *supra*, p. 129, *note* †.

I would have some persons to withdraw and word a question; though it would come better from another House, than from us, that are bargainers for the people. We must consider as well what a man he may be. A young lion's teeth and claws may grow. I speak not of him, God knows! Yet we are not to trust too far. If we were assured that through his life he would not err, no man can tell who is to come after. Can you retrench that power you are making for perpetuity.

St. Austin and Pelagius were born both in a day.* The antidote and poison were both of an age. Make the provision for the safety of the peoples' liberties and your Magistrate's power and prerogative, contemporary. Let them be twins. Let them justify one another. Let not one precede the other. Who would you have the Protector thank for his power: the people, the army, the council?† Let him own you for it. *Amor et deliciæ populi Angliæ:* let him be so, when made your creature, not *ad extra.* It is a human institution, only own him as your authority. The Parliament will be said to be either fools or madmen, that know not what is fit for them so well as another.

Why should we think ourselves more unfit to provide for ourselves, and for our own good than any other; if we be so, let us set up the Court of Wards‡ again, not for our children but for ourselves. Why may not we be as well intrusted as any single person?

Who better judges than the heads of the tribes? Name a Committee to form a question that may take in both. You will dispatch more in an hour, than you have done in all this time.

* Nov. 13, 354. Pelagius was born in North Wales. Jerome calls him *Pluto;* and his disciple, Celestius, a learned Scotsman, *Cerberus.*

† Mrs. Hutchinson, speaking of Oliver, says that when death had "confined all his vast ambition into the narrow compass of a grave, his armie and court substituted his eldest sonne, Richard, in his roome, who was a meeke, temperate, and quiett man, but had not a spiritt fit to succeed his father, or to manage such a perplexed Government." See "Memoirs of Colonel Hutchinson," (1810,) ii. 218, 219.

‡ See vol. ii. p. 437, *note.*

*Mr. Bayles.* I would not have it thought that those gentlemen that do not speak, cannot speak. They reserve themselves for a *yea* or *no*. I move to have this question put singly.

*Mr.* ———. Here it is not proved that the title is in you. There is some argument from Scripture: "not so from the beginning:" nobody chose Adam: Nimrod not chosen by the people: Moses not chosen by the people. They would hardly own him, so could not be imagined to choose him. To prove it by Scripture is hard, unless by those that mistake Esop's Fables for the Scripture. Did the people choose Samuel or Saul? They were chosen in an extraordinary manner. Saul sends away his servants, brings no witnesses that he was chosen. He did do it by lot, which clears that the people had not the right of choice. David so. Our kings: those that know history, know they were kings before the Parliament declared them so, their top-stone. They never intended to change the Government, but it is said, through necessity and the King's stubbornness, they took him off.* All the rule of law being taken away, they came to a pretended rule of nature, that all government was in themselves: and found it out this way, that all power was in the people;† which you will not find in your books.

But, you will say, where shall the blood lie? It was but the representation of some towns and places. The town that sent me hither had none; therefore they are clear of the blood. I admire any man should affirm such a presumption. He that made one, pulls down another. He that has ordained the end, has likewise ordained the means; breaking up this House. The power, *de facto*, was in them, I will not deny. What successes in those times? A more advantageous peace might have been made with Holland.‡ They were terrible abroad, because terrible within. They raised

* Bishop Horsely denounces *ex cathedrâ*, (Jan. 30, 1793), "that clumsy contrivance of republican wit, a Court of Judicature, to try a King's conduct, and to punish his delinquency." See "Mr. Fox," *supra*, p. 110.

† See *Rushworth*, in vol. ii. p. 434, *note*.

‡ See *supra*, pp. 111, 112.

terrible taxes within,* and had the power too; whether by the people's concurrence I shall not dispute.

The same hand of Providence has set him up. I think it a wonder that such a person, so without gall or guile,† should be. In these times it is strange, and shall we dispute this too? He was Protector before we came. I would have it declared so, in the present tense, that he is. I would have that to be the question.

*Colonel Terrill.* The question seems to be, whether he is Protector, or whether we do make him so. First agree that, whether your constitution be other than by the foundation of the Petition and Advice.

If he be Protector, then we must acknowledge the Petition and Advice, that makes him so, to be a law. But admit it to be so, I think it is but in part permanent, in part temporary.

The second article, touching the two Houses, is a mere temporary personal power, during the Protector's life only.‡

I appeal whether a grant to his Highness the Lord Protector, whether it be of power, authority, or land, be other than temporary, personal, and during life only.

A grant to bodies politic, aggregate of many, whether it be of power or land, with the word, successors, passes into perpetuity. But such a grant to a sole corporation without the word successors, is temporary and dies with the person.

There is a difference between the case of the King and other sole corporations.

If a grant had been made to the King by name of King, without heirs and successors, it had gone to his heirs and successors as a perpetuity; because, in the eye of the law, he dies not, and there is no *interregnum*.

I do not say this, to abate any thing of his Highness's authority. Though I do not allow that he is empowered to call Parliaments by that authority, yet I acknowledge him in

* Yet see vol. ii. p. 396, *note* §.

† See *supra*, p. 27.

‡ See vol. i. pp. 380, 381; ii. pp. 298, 301, *notes*.

possession. He hath a possessionary right, which, I am sure, gives him power enough to call Parliaments.

Compare, then, his Highness to the King and to a sole corporation. Compared to the King, I acknowledge he hath the power and prerogative of a King.

But the question is, what capacity he takes. His capacity agrees in nothing with that of a King. All the lands that a King was seized of, he had them *jure coronæ*. Was the Protector so seized? No man will say so. Therefore, you see they differ in the access of the power.

So when the King departed with lands, those lands which he died seized of, and which he had by inheritance, descended to his heir in natural capacity; but those which he had *jure coronæ* went to the successor.

If the King hath a grant to him and his heirs, it goes to his successors; or, if it be to his successors, it goes to his heirs.

But in all those things the case of the Protector differs. One might have been the Protector's heir, and another his successor; the one hereditary, the other elective. If committed to him and his successors, it had gone to his heir. They differ in every thing in the nature of capacity. With other sole corporations he agrees in all things; but not in any thing with a King.

A grant to the Protector, without successors, is no more than a grant to a bishop. If land is committed to a bishop, it is but for life, without successors.

1. The very intendment of the act is, where any thing is intended to be placed upon his successor they are particularly named, and not the word successor left out. But where successors are not named, there it is only personal. As the first article, that your Highness shall have power to name* your

* "That your Highness will be pleased, during your life-time, to appoint and declare the person who shall, immediately after your death, succeed you in the government of these nations." *Parl. Hist.* (1760,) xxi. 131.

*successor* cannot be intended for more than personally for himself.

2. There are words of personality and propriety in this very article to call Parliament.* It names not *successors*, so that it was never intended that he should have the same power that his father had. Observe the word "yourself," and "the people," most happy. It is *verbum negativum pregnans*, exclusive of any thing else. It was a great prudence to leave out the word. It could not be, that so many learned men could commit such a word. I commend them much that omitted this word, *successors*; for, otherwise, it would have subverted fundamentals: and therefore it was, as to that article, made but probationary, during the life of his Highness.

3. His Highness had authority to build two Houses, and built but one. Is that a perfect Act?

Objection. But in one of the additional clauses of the Petition and Advice, there is the word "successors."†

If you refer to that fifth article,‡ in principle, there is nothing of grant, but a subsequent limitation. I hope it will be as much for me. The word "successors" crept in, but only to help the other as to approbation. It refers only to the approbation, not to the estate limited before. It granted him not a farther estate. I should not be so positive that we sit by that Petition and Advice. We trip up our own heels, indeed, if we sit by it, and admit of the Act. It is an argument for Scotch and Irish members.

The child§ would have devoured the mother. It was a miracle that they that had power to make themselves what they did, did not make themselves what they would. I looked upon setting up that House to be a destroying of this. It was a providence of God, that that House should fall of itself. If this be so, I hope it will save your time in pulling down

* See vol. i. pp. 380, 381.

† "That the nomination of the persons to supply the place of such members of the Other House, as shall die or be removed, shall be by your Highness and your successors." *Parl. Hist.* xxi. 147.

‡ *Ibid*, p. 387, 388.

§ "Meaning the other House." *Goddard MS.*

that which is fallen of itself, the other House. After fifty years study of the law, if I mistake, I must say with the cobbler, *opus perdidi*, if this be not law.

The question is not, whether he is Protector, but whether we shall make him such.

If we shall build upon a sandy ground and a dubious foundation, and detest that which is sound and fundamental, it will not be safe.

I agree the Petition and Advice to be a law as to calling Parliaments; but this part of the law is dead and buried with the Protector. It followed his Highness to his sepulchre. I shall not stir in the ashes. Let us build upon ourselves without any reference. If we take one part to build upon, we must build on another. All forced Parliaments are nought. We may build upon a good one. Let us not give away all, by admitting this previous vote. We are here for the people. Let us set up that Government that will stand. I perfectly remember that arms had never been taken up, but for the militia and negative voice. A Bill was sent to him thrice about passing the militia, and he would not. Then the House sent him word they would pass it without him.* Then he went to the North.

The law of nature is the law of God; I take it so. I was consenting to the business in that Parliament, but I had never any prick of conscience as yet.

We shall go about to make him Chief Magistrate, and know not in the mean time what that means, whether it comprehends the militia and negative voice, and all the prerogative. I am sure, Mr. Speaker, if the lion once saith that the foxes ears be horns, I know what will become of the fox.

I am confident his Highness would quickly make his choice rather to be built on us than on such a sandy foundation.

I doubt Ireland is no part of this Commonwealth. So it will not be safe for you to take that into your question.

I move that it be referred to a Committee to word the question, as was moved before.

* See vol. ii. p. 435, *note*.

*Mr. Godfrey.* You are out of the way, I doubt. State the question with the limitations; and the resolve for a previous vote, one a general clause, the other additional; a new question.

It is offered to you, that a Committee withdraw, and pen a question about the militia and negative voice. If they agree of a question, it leads into a large field. I know not what time will be spent before this be done.

I would have you pass the vote that his Highness be Protector; but the limitations ought naturally to precede. Make that your question, whether those words shall be part of your question.

*Sir Henry Vane.* The state of the business you were upon, was for a previous vote. I was once against it; but now it occurs to me that it may be useful to you.

The whole debate runs upon these two feet, that at the same time that you declare your judgments for his Highness, you would also assert the rights of the people. I believe you apprehend how dangerous it is to confess a title in being, that is not from yourselves, of your own giving; but by way of debt; for there is no obligation to acknowledge obedience to a title you do not set up. I would have it considered: that such a vote be prepared that both may go together, and that it may pass with more unanimity.

*Mr. Young.* I move to put the additional words, first, else you exclude us that are for the words additional; for if the other pass, we are not sure this shall pass. I would have us jointly agree what we have severally sworn to, but not to part the oath, that the people's liberties should also be cared for.

*Mr. Speaker* stated the question, reported the debate, and was going to put the question for the latter words.

*Sir Anthony Ashley Cooper.* You have the same state of things now before you, as you had in the Parliament of 54, our judgments differing. A recognition was then proposed. It was said, that it was not consistent with the care, wisdom, and gravity of this House, to pass the interest of the single person but with the interest of the people. At length a previous vote was agreed upon, that nothing in that should

be of force, unless the whole did pass. That which is now proposed, is thought impracticable, but was not so then.

You are now upon a Petition and Advice, which is told you is a law, and if you say so, the judges will say so. Never was so absolute a Government. If the Florentine and he that sate in the great chair of the world, had all met together, they could not have made any thing so absolute. Is there not another House sitting, that claim a negative over you?* When you have passed this, what is wanting? Nothing but monies.

State the case. The Petition and Advice is necessary to stand. A Parliament is freely chosen, and we own it. We go home by some necessity of state. Then does not the Petition and Advice outlive us? This may happen, and produce inconveniences to us, to the Protector, none. Is not this security to him, that he shall be put in the great *magna charta?*

If the Petition and Advice by piece-meal comes to be confirmed, we may not feel the smart of the Petition and Advice in this man's time. It may happen in another's. It may not sound well in after ages, to have things so uncertain and liable to disputes. The laws left doubtful, we have not been faithful to his Highness.

I move to assert his authority together with the liberty of the people. This will be security and indemnity to all. Put the case, that you should vote him Chief Magistrate only, and then leave him to the ancient laws to expound what that means. Shall we not leave him to those ancient doubts and disputes which have cost us so much blood?

Englishmen's minds are free, and better taught in their liberties now than ever. A Parliament cannot enslave the people. It may happen in after ages, that the people may claim their liberties over again. I would have the addition and the question go all together. We have left a bone of contention to posterity, I fear. We may rise before all be perfected, for some reason of state. It is not against the or-

* See this Speaker's jealousy of the other House, vol. ii. p. 433.

ders of the House to put them together. I would have them put together. Let them go hand in hand.

*Sir Arthur Haslerigge.* What is propounded is exceeding short of what you will do. The general sense is, that all should go together; that is the main thing, the militia and negative voice. The words proposed are exceedingly short. We have found, though we have agreed in the mind, yet the Chairman could never so well collect it, as when a Committee was appointed to word a question. It would save time in the House if a Committee of eight or ten were to provide against to-morrow morning, a question for you.

*Mr. Solicitor-general.* The proper question is, whether you will have any addition at all. I cannot consent to any addition at this time. I would be as much for the liberty of the people as any man; but it is not for the honour of the nation to be disputing whether you will have a Protector or no. Those that are of opinion that all the power is in this House, do not acknowledge the Protector to be Chief Magistrate at all, not so much as *de facto.*

I hope we shall be all sensible of the liberties of the people; but there is a time for all things. The Petition and Advice may be debated afterward, as to the other House and the like; but never stay debating your Chief Magistrate. Put the question whether there shall be any additions at all; or put the question, if the question shall be put.

*Mr. Neville.* The word magistrate signifies to execute. I first moved you for the additional words.* I affirm it, this is the same quarrel that was in 1640. Inevitably a civil war must follow. If you give up the liberties of the people, you lay the foundation for it. Chief Magistracy continued three hundred years because the barons' interest supported it; but the Petition of Right not three months, because the King had not interest to support it.† I would have a Committee to pen the question against to-morrow.

* See *supra*, pp. 34, 132.

† See *supra*, p. 171, *note*[a]. Of "the Petition of Right, as it was called," *Ludlow* says, that "by the manner of passing it, and more by

*Mr. Attorney-general.* I move to propound a question, and let any gentleman speak to it.

*Mr. Reynolds.* That gentleman, in learnedly begging a question, begs the question. They will put that upon you, which you cannot do, which you may not do. It is impossible for any man to propound a question that will please all. Always a Committee has been appointed. If you pass this singly, I must give my negative to it; for I dare not trust it without any thing for the people. No Prince in Christendom would have so undoubted a title as this single person, if founded upon such an unanimous consent; joining his and the people's liberties together. I would have a Committee to pen the question.

*Mr. Speaker.* This is against your orders, that a Committee should be appointed.

*Mr. Swinfen.* Is it possible for a quarrel to be upon a word, a question, and you cannot agree how to propound it? That which is not denied openly, is denied collaterally. To hinder this question you will not put it upon his being Protector, till you have provided all other laws, on a negative voice, militia, sales of lands. If you agree not of his being Protector, I would have the question put, whether the addition shall be part of the question?

The question was propounded, first entire, and then apart.

*Mr. Young.* I move against the word "undoubted."

*Sir Arthur Haslerigge.* We must now, it seems, either speak, or for ever hold our peace. I hear your question. I am unfit for it at this time a-day; but I see I am put upon it to go on. I shall move that every man may have liberty to speak over again. This is a great building you are upon. We must consider what we were, what we are, and what we shall be.

*Serjeant Maynard.* He may not repeat the whole business, but only speak to the question.

the way of keeping, or rather breaking it in almost every particular, the people clearly saw what they were to expect from the King." *Memoirs* (1698) i. 2.

*Sir Arthur Haslerigge* went on, and said he had spoke.

*Captain Baynes* and *Mr. Neville* moved to adjourn, or hear one another with patience.

*Mr. Hoskins.* One may speak to change a word in a question, but not to launch into the whole debate.

*Sir John Northcote.* A man must give his reason for changing it, else we shall go away as very unreasonable creatures. I know not whether, when we have given away all, they will keep us upon charity. If we do no more but recognize and raise money, I should wish to go beyond sea.

*Mr. Redding.* I move to adjourn; for our time is spent, and Sir Arthur is fresh. It is against the orders of the House. The wording of this question is very considerable.

*Mr. Boburda.* I move to put the question without an addition.

*Mr. Reynell.* "Undoubted Protector," is more bottomless than the limitation. You give all away at a lump; swallow Petition and Advice and all power unlimited. I have great exceptions, and desire, on behalf of the people of England, of the nation, that I may be heard speak. I would have the militia and negative voice inserted.

*Mr. Hungerford.* It is the will of Government to govern at will.* The word "undoubted," gives him a title to all that is in the Petition and Advice. It is fit we should have the negative voice and militia inserted in this question.

He said, he had provided a question, which he read. It was to confer the office of Chief Magistrate and Lord Protector on his Highness, to rule according to such limitations, &c. as should be declared in the Bill; and that the militia should remain in the Commons, and that he should have no negative in passing laws.

*Lord Lambert.* The question is neatly and well penned; but it is much for any gentleman to sum up the sense of the House in a question; and it takes in only a part of what is now debated upon. I would have no reflection upon any person, as that any were for or against the Protector. We

* See this imputation on "the Court party," *supra*, p. 32, *note*.

are all for this honourable person that is now in the power. Laying imputations upon one another, I would have forborne.

*Mr. Knightley.* No man ought to thrust in a question upon a debate. I would have such a question that we may agree upon without dividing. Upon a question, it looks strangely upon your books, that it was carried but by three,* and who were Tellers. I would have a Committee to withdraw.

*Mr. Trevor.* This question has had ill fortune. I would have it pass singly. I gave you my reasons. I cannot trouble you long, if I would. I would have you put the question if you will have any addition.

*Sir Arthur Haslerigge.* I would have our minds expressed in plain English words. I like not recognition, or according to laws. Let us have it in plainly, militia and negative voice.

He pressed Mr. Hungerford's question.

After an hour's debate what the question should be, the debate was adjourned till to-morrow morning.†

* Probably the Petition and Advice. See *supra*, pp. 204, 205.

† On the number of "days wholly taken up in debating this grand point of Government, without coming to any conclusion about it," it has been remarked, that "this great contest lay between the republican party and the court party, as they were now called, who, like men of the same appellation of a later date, were always ready to support such measures as contributed to their own private ends; and Richard's known weakness gave them great hopes of much emolument under his reign." *Parl. Hist.* xxi. 283, 284. See *supra*, p. 32, *note* †.

"The Court," says *Ludlow*, "presuming to carry all before them, grew unmeasurably insolent, and all that could be done, was only to lengthen out their debates, and to hang on the wheels of the chariot, that they might not be able to drive so furiously. By this means, time was gained to infuse good principles into divers young gentlemen, who, before, had never been in any public assembly, in hopes that though for the present, their previous engagements should carry them against us, yet, upon more mature deliberation, they might discover where their true interest lay. Neither were our endeavours without success; for having frequently held the House nine or ten days in debate, before they could come to a question, many gentlemen who came to Westminster prepossessed in favour of the court, confessed that the reasons of the Common-wealth party were so cogent that they were not able to resist them."—*Memoirs*, (1698), ii. 624, 625.

The House adjourned at two o'clock, accordingly.

The Grand Committee for Trade sat the first time: Mr. Scawen in the chair. They were in the business of wool and wool-sellers transporting, and appointed a sub-Committee to enquire of that and other things, and adjourned before night.

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*Saturday, February*, 12, 1658-9.

*Mr. Speaker* took the chair at nine. Mr. Cooper prayed.

*Captain Whalley* moved that he was chosen for Nottingham and Shoreham, and that a new writ might issue for Shoreham, he making his election for Nottingham.

*Colonel Allured.* You have vipers in your bowels, divers delinquents. I move that they be commanded to withdraw. You have such as have been in arms against you, and Compounders at Haberdashers' Hall;* and particularly one Mr. Jones. Members in the House can prove it.

*Colonel Andrews* and *Mr. Starkey.* A good motion, but not seasonably offered.

*Mr. Reynolds.* Nothing ought to intervene a fundamental order of the House, to purge your own house before any thing else. Would you have your counsels told beyond sea to Charles Stuart? I know a record, that when a member that was the King's servant discovered the debate of the House to the King, he was turned out of the House, and sent to the Tower.

*Mr. Bodurda.* I am glad the Petition and Advice is armed with power to keep out delinquents; but there are three Joneses in the House. He has not named what his christian name is.

*Mr. Speaker.* Mr. Streete has been with me, and he stands upon his innocency. It may be, this gentleman has given signal testimony.

* Before Commissioners, appointed by the Parliament to compound with delinquents.

*Sir Arthur Haslerigge.* We stand in no need of the Petition and Advice for the qualifications of the members. In the beginning of the Long Parliament we turned out all monopolists. It is not fit those that have voted and fought against the liberties of the people, should be here to debate them.

*Colonel Thompson.* There are several ordinances to exclude delinquents, not only from sitting here, but from all other places of trust.

*Mr. Knightley.* Being called here by Providence, I desire to know your sense about the Long Parliament, whether it be still of force, notwithstanding the force put upon it.

*A gentleman* stood up and said, "This may be a mistake, as one asked me if I was of the Parliament at Oxford;* because I said I was of the Long Parliament."

It seems, it was Sir Arthur Haslerigge asked concerning him, because he could not remember that ever he saw him sit in the Long Parliament, and said he meant no ill in privately acquainting the gentleman with it; but he was really of the Long Parliament, and Sir Arthur Haslerigge mistook.

*Mr. Jones.* I am the Attorney-general of Wales.† If I might have my charge, I shall answer to it. I deny it. It was my fortune to be in a place of trouble in Monmouth. In February 48, you took an account of persons against you. It was your own expression that they were forced to it. I am not one of those persons. As I have not been in arms, so I am not one of those. If I stand in a falsehood in the esteem of this honourable assembly, I had rather not have desired to be here. I have been in all offices that you delegated since that time. I have served your Protector with life and member with as much faithfulness as any man. I deny the whole charge, and no man alive can prove it.

*Mr. Scot.* If he have compounded at Haberdashers' Hall, it is evidence enough.

* Forty-four lords and one hundred and eighteen commoners met there Jan. 22, 1643-4, and were dismissed April 16 following. "The King," says Coke, "in his letters to the Queen, calls them his *Mungrel* Parliament." *Detection* (1697), p. 300.

† "Edmund Jones, Esq. his Highness's Attorney-general for South Wales; now member for Brecon." *Parl. Hist.* xxi. 260.

*Colonel Okey.* Colonel Freeman and ———,* could prove it.

*Sir John Lenthall.* I move to take this member that has fully served you, to serve you in this House. I would have the name of Cavalier buried in the Act of Oblivion.

*Lord Lambert.* It is not enough to serve you in those offices, unless they venture life and member. I would not have that a precedent to bring them into this House. They would be glad of it. They would outvote you here, and in the counties, and shall be chosen before those that fully served. There are more than one, or two, or three, that, I am well informed, have lived all the time of the war in the enemy's garrisons. Though but six now, allow this, and you will have six score next time. After all this blood and war, to see such an indifference as to who sits within these walls! Ask him that question, whether he has, directly or indirectly, aided, assisted, or abetted?

*Sir Walter Earle.* I move that he be asked if he have compounded at Haberdashers' Hall.

*Mr. Hoskins.* I move to hear the gentlemen of the House that could say any thing to this business. In regard they say nothing, appoint another day for hearing it.

*Sir Arthur Haslerigge.* I wonder to hear the Act of Oblivion mentioned. I would have the names abolished, and men under a severe penalty to name them; but to take such into our councils, what shall become of us? Can we imagine that they will not do us a thousand times more mischief; that we shall be forced to fight the business over again. It appears to me, that he confesses enough; but said it was under force. Those in Wales were so numerous, that we were forced to compound with them by the lump. He says he is Attorney-general in South Wales, and has served you all along. I believe the Commonwealth put him into that place. I would have him asked if he have compounded.

*Mr. Knightley.* The House inclines neither to acquit him nor condemn him. I would have him withdraw and forbear sitting, till the matter be determined.

* Blank in the MS.

*Mr. Starkey.* I know the gentleman and something of his case. He has served you formerly here. Since 48, he has had signal testimony, which, if he had not been surprised, he would have satisfied you of. If I sat not here by the Petition and Advice, I should withdraw. I know no other law in force. I know no other law to keep out unqualified members. The generality of the nation have taken it for their rule. The qualifications say no otherwise than "signal testimony;"* and those rules invited the electors to choose that gentleman. His employment goes a far way in giving signal testimony. He can show you the declaration of his Highness and Council of his signal testimony.† It is reasonable to take that rule, the Petition and Advice. I desire he may not be asked questions to accuse himself. Appoint him a day to satisfy you.

*Mr. Neville.* If we had not a better law than the Petition and Advice to sit by, we sat but by a piece of paper. You heard it from the post, *per* Colonel Terrill, that without the word "successor," the power of the Petition and Advice was out of doors, and died with his Highness. ‡ I would have this gentleman both for his own honour and yours, to press to have it put into a speedy way of examination by a Committee. I should do it, if it were my case.

*Mr. Manley.* We all ought to thank the gentleman for that motion; but I humbly conceive there is no case before you to debate upon. It is an unreasonable thing to bring a man to his answer before he be accursed. This will bring more libels upon you than you are aware of. I would have an accusation first against him, before you proceed.

*Mr. Scot.* *Si accusisse sufficit, quis erit innocens, nec si negare sufficit, quis erit nocens?* I would have him questioned, if he have compounded at Haberdashers'-hall. It may be, he never bore arms; no more did Serjeant Glanville§ and Lord Southampton, yet they did as much against you as those that

* See *Parl. Hist.* xxi. 132.

† "Of good affection to this Commonwealth." *Ibid.*

‡ See *supra*, p. 223.

§ Member for St. Germans, expelled, probably, on a previous day. See *Journals*, Feb. 12; *Parl. Hist.* xxi. 286, *note.*

fought against you. If having a good place be signal testimony, it is a good requital. I believe few lawyers in England would refuse such a place. I would have some to examine the business, and, in the mean time, to suspend his sitting. I would have him asked if he have compounded.

*Mr. Speaker.* You have never a charge before you against this gentleman. If you please, refer it to a Committee, and, in the meantime, he may withdraw.

*Colonel Morley.* I have taken an oath to be true and faithful to his Highness, and also to the liberties of the people. If I admit Cavaliers to sit here, I break my oath in both.

*Sir John Northcote.* Sir Richard Onslow being questioned here for a Cavalier, it was referred to a Committee; yet he still sat in the House, and was after, acquitted. If you go about, upon a bare accusation, to suspend gentlemen sitting here, you will have a thin House. I would not have him suspended.

*Colonel Birch.* I move for a Committee to examine the business, and that the gentleman be suspended.

*Lieutenant-general Ludlow.* This is more than a bare accusation. He has confessed enough. I hear of several others. In this juncture of affairs it is not fit to admit him.

*Colonel Thompson.* I would do as I would be done by. I think a bare accusation is not enough to cause you to suspend this gentleman. If he deny it, which I suppose he has, I would have another question asked him. An accusation by a member ought not to sway more with you, than a denial of a member. If he find himself innocent, it will be his wisdom to sit; if otherwise, to forbear. Ask him the other question.

*Mr. Goodwin.* Sir Richard Onslow was never accused of delinquency. That gentleman is clearly mistaken in reporting his case. I would have this referred to the Committee of Privileges, to report the matter of fact: but leave it to him to withdraw, or not withdraw.

*Mr. Reynolds.* Ask him two questions. 1. If he have "abetted, advised, or assisted,"* or have compounded? This

* See *Parl. Hist.*, xxi. 132.

will save your time. It has induced a suspicion by what he has answered already. I would have him called to his place, and asked these two questions.

*Serjeant Waller.* I would ask this question, whether it is proper for any member thus *prodere se-ipsum.* Let it appear upon the accusation.

*One Gentleman* stood up and said, "All that have abetted or assisted! You will have a thin House. Many estates were sequestrated away. I am sure of it."

*Captain Baynes.* It is a reflexion upon the whole House. I am sorry to hear that said. I would have the gentleman explain. I hear it said above, that many such are here.

*Mr. Turner.* I think a signal service is to be Attorney-general. It may be he has given over signal service; for so your qualifications ran.

*Colonel Mildmay* and *Colonel Okey.* If that country was under a force, they made him themselves. Wales was the nursery of the King's cause. I would have him called down, and asked if he have compounded.

*Sir John Lenthall.* It has not been my practice to trouble you much. Your proceeding here ought to be suitable to our Courts of Justice. If any matter be before you, proceed upon it. I think this gentleman has given you signal testimony; so that there is not that danger of him, as is urged to you.

*Mr. Hele.* I shall never speak for protecting any delinquent, especially within these walls. No law makes a man a criminal.

*Mr. Speaker.* I see other things waved. It will appear on record, in another place, if he have compounded.

Being called down.

*Mr. Speaker.* Asked him, if ever he compounded as a delinquent?

*Mr. Jones.* I did not compound as a delinquent in arms. There was an ordinance to qualify the composition. I did come to Haberdashers'-hall, and, fearing to come within compass of some ordinance, it may be, I did set my hand to a

paper; but, as to being in arms or compounding other than to prevent inconveniences for fear of the ordinance, I did not.

This said, he withdrew.

He said he sat in Parliament in 54, when there were the same gentlemen that were here in this House.

*Mr. Weaver.* I wonder any person calls for the question. The honour of this House is at stake. He has confessed enough to draw a guilt upon him. My motion is that this gentleman may be suspended from sitting; and to disable the town that sent him hither, from ever sending any member hither. I would have the electors punished; at least, for some Parliaments, disabled. I would have Mr. Streete, that has sat here ever since, to be now called on to make his answer, and that a Committee be appointed to receive all complaints of this nature.

*Colonel Okey.* I second that motion, that he be suspended, and the electors for ever suspended.

*Mr. Nathaniel Bacon.* This gentleman might, as many have done, haply compound, to save charge; rather than be troubled with informations.

*Sir Arthur Haslerigge.* I am sorry to hear it urged that there are so many in this House that have aided, &c. It seems that gentleman was admitted into the Parliament in 54, when others were kept out. He confesses he set his hand to a paper, though he is so wise as not to tell you for what. Haply he compounded for an old song. He got well by his composition, a good office. I mind you what it was that he set his hand to: to raise money for the King against you, I believe it might be. If it had been but being present at the Committee of Array, it was enough to make him liable to composition. We must believe it was for the worst of purposes, unless he explain.

Vote first that he may not sit as a member of this House, during this Parliament. I hope we shall, ere we rise, take care to keep all such out for a longer time. All the King's army came out of Wales. Command this gentleman to forbear sitting; and do not issue out a new writ, to be further troubled with such elections.

*Mr. St. Nicholas.* He has confessed a paper. Many men have done you more harm with their heads and pens, than with their swords.

*Mr. Goodrick.* I move not to exclude this gentleman till he be heard. I come not here to plead for delinquents. Let matters of fact be stated by a Committee. He has given signal testimony.

*Mr. Bernard.* The matter of fact is clear by his own acknowledgment. I move, if you please, that he be excluded from sitting in this House.

*Colonel Morley.* He told you he did not compound out of guilt, but to prevent inconvenience. I believe all Cavaliers did compound, not out of guilt.

*Colonel West.* I move that he be excluded from sitting in this House; but to disable those that sent him, I am against it.

*Mr. Manley.* I am not ripe for judgment to exclude him, till you hear his whole answer. If it appear that the leaven does not remain, and that he has given signal testimony, I hope you will not suspend him.

*Sir William Wheeler.* No man was, by that Ordinance, admitted to compound for a year's value, unless he put in a petition, and by that Petition did acknowledge himself to be a delinquent. Enough has been said. Put the question that he be discharged from sitting in this House.

*Mr. Weaver.* I move for expulsion, and that for ever he be unable to be chosen. It is argued that you would admit him in another Parliament. I would have it entered, that the nation may know it, that he be expelled for delinquency, that he be for ever disabled, and that his office be taken from him.

*Major Burton.* My heart aches to see gentlemen of the Long Robe plead for delinquents. I would have him expelled.

*Captain Whalley.* I move, that for the present he be excluded, and that a Committee be appointed to examine his signal testimony, and then re-admit him.

*Mr. Serjeant Seys.* I would have signal testimony explained. He has not cause to complain of the loss of a place

of 600*l.* per annum. He rides into six counties, and has not twenty nobles per annum. I second that motion of Captain Whalley, who has prevented what I could say.

*Mr. Secretary.* I think the matter is plain by his confession. What should you then refer? I agree with the highest proposal, that he be expelled for the present, and disabled for the future from sitting here, before the Parliament have declared that he had given signal testimony. He might have forborne. I would have you spend no more time about it.

*Colonel Morley.* I would have not only his discharge, but his crime entered upon your books.

Resolved, that Mr. Edward Jones, returned to serve as a member for the county of Brecon in this present Parliament, be, for his delinquency, expelled this House, and for ever disabled from sitting in any other Parliament.

*Mr. Bampfield.* I move for a new writ to issue out.

*Colonel White.* I would have this addition to his punishment, that he be sent to the Tower for presuming to sit here.

*Colonel Kenrick* stood up to second that motion.

*Major Burton.* I move not to put it off so lightly. Many that hear me, would have something more than ordinary. That is a poor punishment.

*Mr. Bodurda.* I have that to acquaint you with, which is much for your service. A gentleman that has led a regiment of dragoons against you. I have some difficulty upon me to name him. Some call him Mr. Danvers, some Mr. Villiers.*

*Mr. Ashe.* It has pleased God to take out of the world a gentleman, Mr. John Ashe, who was able to have made good this information. Sir John Danvers did then acknowledge him to be a Papist in arms, I thought.

*Mr. Danvers.* I must first answer totally this charge. Some of that name I left, because I would not be under suspicion. I utterly deny all aiding, abetting, or assisting. Mr. John Ashe was my competitor. I was questioned by the Major-generals. I have their discharge from under their

* "Robert Villiers, alias Danvers of Bassetbury, Member for Westbury." *Parl. Hist.*, xxi. 257. See *Journals*.

hands, Sir Thomas Widdrington, Sir John Barkstead, and Major-general Bridges. The Colonel cleared me with a testimony that I was no delinquent. I have not this ready to produce about me. *Calumnio dato*, something sticks. I desire, if guilty, that I may have signal punishment; if not so, that I may prosecute, and that I may have reparation.

*Mr. Knightley.* That gentleman told me he had great favour from the King, and that he had a regiment. He told me, though he had been bred a Papist, he considered the fooleries of that religion. Sir John Danvers desired that he might have a regiment to go into Spain. An ill way of conversion I told him it was, to go into Spain. This wrought with Sir John Danvers, whose daughter he married. He had the favour to come to a composition, against the order that a Papist in arms could not be admitted to compound. Here I left him in 48. How he has demeaned himself since, I know not.

*Mr. Danvers.* I was but seventeen years old. I do flatly deny delinquency. Sir John Danvers might confess it. Money was paid by him for it. I felt it. I deny all, the least punctilio. It was no act of my own. They were faults that other people will lay upon me when I was in my minority. My mother was of that religion and I lived amongst them. Thence came Sir John Danvers to tell stories.

*Mr. Knightley.* This story that Sir John Danvers told me, was in the gentleman's own presence; and he then said nothing to the contrary.

*Mr. Jenkinson.* It was told me by Colonel Legge, that this gentleman had a regiment in the King's army.

*Mr. Raleigh.* The gentleman has misrepresented. This makes me suspect some guilt. He says Sir John Danvers, to his great prejudice, did compound for him. It cannot be probable that for one that married his daughter, and one of the heirs to him, he would misspend his money in paying so much for his composition.

*Mr. Weaver.* This gentleman came several times in this Parliament. He was a Papist in arms, and so disabled; but

Sir John Danvers did move that Mr. Marshall* should confer with him, and having conferred, he brought a note to this table from Mr. Marshall, and by the favour of this House he was admitted to compound.

*Mr. Knightley.* Sir John Danvers told me, that this gentleman had behaved himself so well in the King's army, that he had a regiment.

*Mr. Grove.* This gentleman was chosen for a place in the County for which I serve. He came a month before the election to that place, and made the electors drunk every day with sack. It cost him, they say, 100*l.* to be chosen;† and if you do justice, he will have an ill bargain of it.

*Colonel Mildmay.* You ought to appoint a Committee, because he denies the matter of fact.

*Mr. Starkey.* The matter of fact is proved sufficiently. So I would not only have him excluded, but have a good fine upon his head; because he seems to desire it.

*Sir Arthur Haslerigge.* I wonder at the gentleman's confident denial; the matter being so clear. I am for the honour, justice, and safety of this House. I would not have any man complain of injustice. I apprehend him not, at present, fit to sit in this House; but, it being not clear, let your books be searched, and it will be found whether he or his guardian compounded. It will appear by Colonel Legge's testimony.

Suspend him for the present, and refer it to a Committee; and not only this, but all matters of this nature; that the great business of the nation may not be hindered: for all business must give place to that of your purging your House.

*Mr. Jenkinson.* I saw the gentleman so confident to outface a worthy member, else I had not troubled you in this business. Colonel Legge told me that he told the Major-general of it. It was Major-general Packer.

*Major-general Packer.* I know this business, throughout.

* Of whom see Lord Clarendon, *supra*, p. 202, *note*.

† See Lord Lyttleton on a great rise in the market, *supra*, p. 149, *note*. The market for boroughs has, since, further advanced.

This gentleman, among several others, was accused in the County of Bucks. There was great trouble about scanning his business. It was said Colonel Legge could speak fully to it. I sent for Colonel Legge and examined it. He was very cautious, and was under some fear: but Legge did say, he had a regiment of foot in Oxford, and his Major, if called, would justify it. He answered he was under age. He brought down several certificates. He did submit to something, some kind of composition.

*Mr. Humphrys.* Within these three days the minister of Wickham, where this gentleman lives, sent a note in to me, and said it was a grievance to good spirits that such a person sat in this House. He had never been at church since he was minister. He frequented a private meeting, being a Cavalier. A jesuited fellow, to get a certificate from you, that he might not be decimated! When he had got that certificate he presently scowled and derided you. None dare prosecute against such, who cares not to spend 1,000*l.* upon any man that shall vex him. There is matter enough to prove him a very unworthy person to sit in this House.

*Mr. Stephens.* This business is clearer than the other. I was in the chair at Goldsmith's-hall. He was admitted to compound, upon a certificate that he had conformed. I am informed that since the purgation before the Major-general, he did pay 100*l.* for his purgation. I desire the Major-general may be asked if he received not 100*l.* of him.

*Mr. Reynolds.* He denied it a second time. I would have it that he who is so confident to affirm in this House an untruth, should have a signal punishment. He that affirms any thing here, does it in as high a place as if he swore before any Court of Record. I would have him not only expelled, but sent to the Tower.

*Mr. Knightley.* As I understood the gentleman, I heard a challenge for any man to prosecute; and he would have an action at law against him. This was to terrify men.

*Major-general Packer.* He has a discharge for that part of his estate in Bucks; and did pay such a sum of money, I believe, for his discharge.

*Sir Arthur Haslerigge.* This is the first time that ever I heard a gentleman deal so notoriously disingenuously with you. I would have you pass two questions:—

1. That he be expelled this House for his delinquency.

2. That he be sent to the Tower for affirming in this House what was not truth, and so let it be entered upon your books.

*Major-general Bridge.* He petitioned his Highness, and his Highness referred it to Lord Widdrington, Sir John Barkstead and myself. He affirmed that one Villiers had a regiment, but that Danvers had it he denied. We had several certificates as to his reformation, and we reported according to those certificates.

*Mr. Ashe.* There is a Colonel at the door, who can make this information good if you please to call him. Colonel Touchett is his name.

*Serjeant Maynard.* The gentleman has withdrawn. He should sit, when you call in evidence against him, or ask questions in order to the debate.

*Sir John Lenthall.* Neither Colonel Legge nor Colonel Touchett are competent witnesses, unless upon their oaths. Touchett is a papist, or, being turned from that religion, may be wronged in his testimony, and then you may refer it to a Committee.

*Mr. Reynolds.* I move to leave it to your discretion to ask him questions.

*Mr. Knightley.* We never examine upon oath; but, as he ought, as if upon oath. I have known a person disabled from bearing testimony for misinforming this House, keeping his seat.

*Mr. Cartwright.* In regard he positively denies it, I would have it referred to a Committee; because you have testimony offered. None says aught what he did but Sir John Danvers. He tells you he was but seventeen years old. I have known him a long time that he has lived here.

*Colonel More.* It is my duty to inform my knowledge. When I was governor of Monmouth Castle, he desired a pass from me to go to London. He did take the negative voice in

45, and I granted him that pass. Lady Hatton lay then a dying. I heard he took up arms with Sir Robert Howard in Ludlow Castle. He told you, he had under the Major-general's hand testimony to clear him. You find it proved, otherwise, against him.

*Mr. St. Nicholas.* I move not to call in Colonel Touchett. You weaken your testimony.

*Mr. Bodurda.* I move that he be expelled the House, and sent to the Tower, and fined 100*l.*

*Sir Arthur Haslerigge.* A papist is a sufficient testimony, a competent juryman. I would have Touchett called in, to convince him. I would have him called in, and, likewise, the gentleman called down to hear it.

*Mr. Foxwist.* There may be a witness which may alter the whole question. It may be a device; but I think it is clear enough your judgment is ripe.

*Captain Hatsell.* This will hear well abroad, that you have vindicated the old cause. I would have the business fully heard, that he may have nothing to say against the judgment; and that others may see it and take example by it. I move that both be called in.

Colonel Touchett being called in, and Mr. Danvers called down. Mr. Touchett, at the bar, stood, and Mr. Danvers was sitting.

Mr. Touchett said, he had been acquainted twenty years with him. He was acquainted with him in Shropshire.

We quartered together. I was captain of a troop of horse. I know not what command he had then. After, I saw him marching in the head of a regiment of foot, towards Bridgenorth.

He said this was the gentleman, when he looked in his face.

*Mr. Danvers.* I shall humbly add further that I may have leave to fetch papers that will clear me. They trace me all along, where I lived.

I never saw this gentleman to my knowledge. It is hard to prove a negative. I came to Colonel More. He can tell

you how I came away from those parts. I know not what I paid for composition. To the Major-general I paid nothing, only 150*l.* for horses. I freely desired to give it.

I had had once to have gone for Ireland, under his Highness; listed under Colonel Martin. I should have had a troop of horse. I deny that I ever was in the head of a regiment. My mother was violent that way. I suffered much for asserting the Parliament's cause. She might have raised a regiment. I never had a command. I do detest it. I never saw it.

He being withdrawn, the question was put.

*Mr. Fowell* moved not only to expel him, but to send him to the Tower, and fine him 1000*l.*

*Mr. Hungerford.* I move to hear his papers and what he can say. He told you he gave nothing for his purgation but money, to show good affections. I speak knowingly of gentlemen that did subscribe horses and money for affection and not purgation. He was young, carried about by his mother. I desire we may be able to give a good account of our justice. I would have a Committee appointed, not only to examine this business, but all business of this nature.

*Colonel West.* This gentleman was mistaken in this testimony. There is nothing so clear, nor any thing to hinder it going to the question.

*Major-general Packer.* He changed his name at that time, and desired that he might leave that infamous name. He offered freely to lay down money to advance the service, and he had as fair a certificate as could be on that behalf, and because of those certificates from above.

*Lieutenant-general Ludlow.* I would not have him for ever disabled from sitting. I like not his reflections on his mother and family. I would have no further punishment upon him than that he may not sit in this House.

*Mr. Manley.* I acknowledge myself to be of the Long Robe; yet not to plead any delinquent's cause.* I humbly submit it, if you should not hear any thing offered. It will

* See "Major Burton," *supra*, p. 240.

be for the honour of this House to hear all that can be said. I would have a Committee.

*Mr. Higgins.* He was never a delinquent since he came from the government of his mother, when he was not at age. It is contrary to the justice of all courts, to condemn unheard. I would have his certificate produced, to clear up his assertions.

*Mr.* ——— He avers his affection to the Parliament and lays all the blame on his mother's conduct. He says he has papers that will make out where he has been.

*Mr. Knightley.* Seeing it is so far insisted upon, I would have a Committee. His negative papers will not wash off his affirmative delinquency. He went under the name of Colonel Villiers a long time. Seeing you will go to a further punishment, I would have it examined. I have been called a delinquent over and over, in this House.

*Colonel Okey.* I move not to exclude this gentleman utterly. Captain Morgan was at Oxford, and is now faithful to us and on our service, and he may come to do you service.

*Mr. Stephens.* I was against utter disabling in the other case, because I would not have you meddle with after Parliaments. They will meddle with you. I would have you be equal now, and not disable one more than another.

*Mr. Reynolds* moved to the same purpose.

*Serjeant Maynard* moved to divide the question.

*Mr. Speaker* would not without requirement mention the name Danvers, for there is an heir male that claims, and would not have a patent to change his name to disinherit another.

*Sir Walter Earle.* You cannot disable him for ever, but by an Act of Parliament. If he be chosen next Parliament, they may receive him.

*Major-general Kelsey.* I hope that you will severely punish those that come in on the presumption of their own good affections. It will prevent men from intruding for the future. I would have him for ever discharged.

*Colonel Morley.* It is an old rule, that those that belong to one thing, should be put both in one case. He says his

mother raised the men, and Sir John Danvers paid the money.

*Mr. Knightley.* I would not have a negative in this punishment. I would have the question divided.

Resolved, that the clause be added.

Resolved, that Mr. Robert Villiers, returned by the name of Robert Danvers, to serve as a member for the borough of Westbury, be, for his delinquency, expelled this House, and disabled from sitting in this or any future Parliament.*

*Colonel Cromwell.* I move that he be sent to the Fleet.

*Major-general Kelsey.* I move to send him to the Tower, to lie till he pay 1000*l.*

*Mr. Fowell* seconded that motion.

*Lieutenant-general Ludlow.* I would have a Committee appointed to examine all matters of this nature.

*Mr. Stephens* moved for the Tower, but not for the 1000*l.*

*Lieutenant-general Ludlow.* The other gentleman was of full age; this, under age. I would have you to make the case no other.

*Mr. Bodurda.* I would only have him sent to the Tower during pleasure, but not fined. Let others look for the 1000*l.* that will sue for it.

* "Because all parties had confederated against us," says *Ludlow*, "we, in order to lessen their numbers, impeached divers of them, for having been of the King's party, by which means we procured some of them to be expelled, and frighted away some others, who knew themselves to be in the same condition. The Court, to requite us, brought Mr. Marvin Touchet, a papist, and brother to the Lord of Castlehaven, to accuse Mr. Villiers, who had voted with us, of serving in the king's army; and though it appeared that he was forced so to do, by those who had the government of him, he being then but sixteen years of age, and that he came into the Parliament's quarters as soon as he had an opportunity, yet all that could be said proving not sufficient to excuse him, he was likewise voted out of the House." *Memoirs*, ii. 625, 626. See *Journals*.

"Feb. 12. This day wholly employed in turning out two of our members for controversies, Mr. Jones and Mr. Villiers: the first, a monarchical man; the other, republique." *Goddard MS.*, p. 195.

*Colonel* ———* I would have no more severity upon him. You have laid more than the infliction of a fine. You have deprived him of the natural liberty of an Englishman. A person offending in infancy must be differenced from one in ripe age.

*Colonel Kenrick.* Nothing was said against him for fourteen years. He told you he went for bread. He was not likely to raise a regiment in infancy. I would have no further punishment upon him. You have done well.

*Colonel Okey.* If this gentleman had acted any thing since fourteen years, I should not have troubled you. I would have you go no further in punishment.

*Mr. Starkey.* An easy punishment to go only out, and not have a further punishment.

*Colonel Birch* moved to send him to the Tower, but not for the 1000*l.* fine.

*Mr. Steward.* My hearty *yea* went with you for the privative punishment; but I cannot go to the positive punishment, unless you will acknowledge the Petition and Advice to be a law. Then the law makes it plain. I know no other law.

*Mr. St. Nicholas.* You have power to make a law. I would have you go no farther in this; but make it so penal for the future. No doubt you may make what rule you please.

*Mr. Gewen.* Every aggravation is in this man's offence: the testimony of the minister,† his carriage here, to oppose the members. Make the punishment suitable to the person. He is a great man. I would have him in the Tower and fined.

*Mr. Barton.* It was a rule of the Star Chamber to proceed upon estates. We ought to proceed upon persons. When the offence was committed, he had no estate. This House have always been tender of pecuniary mulcts. Five or ten pounds was a great fine in former times. The offence was fourteen years since. He has laboured to give all testimony. He has paid for his offence by his composition. I

* Blank in the MS. † See *supra*, p. 244.

would not have him punished again. Let us not be over rigorous, lest it be afterwards brought here to our prejudice.

*Mr. Disbrowe.* All punishment should be proportionable to the offence. The offence of this person is greater than the other's. His asserting positively against an affirmation in Parliament, is not singly a cause of his imprisonment. I would have him sent to the Tower.

It being propounded, that it be further added to his punishment, that he be committed to the Tower, to continue during the pleasure of the Parliament,—

*Sir Arthur Haslerigge.* I move that his offence in denying the truth, be inserted in the additional punishment.

*Lord Lambert.* The other offence is sufficient to send him to the Tower. I would have the other gentleman also sent to the Tower. It was prevented by interposing this business. Otherwise it was in debate to send the other gentleman to the Tower.

*Colonel Clark.* I would have the difference of the offence assigned. Otherwise the one punishment is not adequate to the offence. You cannot manifest your justice to the world else. The offence of Mr. Villiers is inferior to that of Mr. Jones. I would have you assert some other crime against Mr. Villiers. I would have you either do no more to this man, or assign some other offence.

*Major Beak.* There is no disparity in his age. It was not in the infancy of your war. He was pregnant in his parts and powerful in his interest, though but tender in his years. This tends to the distinction of your business. Let him be exemplary in his punishment. Send him to the Tower, and fine him 1000*l.*

*Mr. Mitford.* The latter gentleman is a higher offender than the first. The first did ingenuously acknowledge it. This peremptorily denied.

The first was an offence against the Commonwealth.

The second offence was against order; and his disingenuity as much as the first. I would have him committed to the Tower.

*Mr. Scot.* I hope I shall not be suspected a delinquent,

but I cannot make a difference of offence. He could not become other principled than as he acknowledges. I have been twenty times in his company, and heard him strongly defend the Parliament's cause. He hastened into your bosom. He was always your zealous champion. I would have no further punishment.

*Colonel Morley.* Either lay them both aside, or let them both go together.

*Colonel Eyre.* I think you have inflicted the greatest punishment that could be. My own knowledge of this person was before the King's death. I never knew any man, in all his discourses, fly so highly in the King's face. I have heard him say, rather than execution be not done upon him, he would do it himself; calling him traitor, tyrant, and the like; strongly arguing it against that interest.

*Sir Richard Temple.* I move, that we may have the more unanimity, to lay both aside. There are different judgments. I would have the punishment adequate to the crime; not to the person or any thing that is collateral.

*Mr. Sadler.* I have no desire to trouble you. I consent with those that say there is inequality in the punishment. It is said, go on and prosper. I say, go on and prosper; but in truth and because of truth, in righteousness and meekness. He that will not use mercy in judgment, shall have judgment without mercy. Make a law, and I should be clearer in it. I thought it true that he had a regiment; but I thought it also true that Sir John Danvers said he was forced. You have now dismembered him, and he is no more a member of your House. He may desire to be heard, and appeal to your justice. He was approved by those Major-generals, and had fair certificates. I would not have this case to differ from the other.

*Mr. Bampfield.* I would not have you, while you punish him, put a further punishment upon yourselves by sitting so late.

The question being put, if the question be now put.

*Mr. Speaker* declared for the *Noes*.

*Colonel Cromwell* and *Sir Thomas Barnardiston* declared for the *Yeas*.

The *Noes* went out.

*Noes* 145. Sir Thomas Beaumont and Major-general Packer, Tellers.

*Yeas* 112. Sir William Wheeler and Mr. Pedley, Tellers.

So it passed in the negative.

*Mr. Weaver.* I am loth to trouble you now, after the best day's work you did yet.

I hope you will make a Committee to receive all Petitions. Divers petitions are abroad, and cannot get in. I would not put it upon you now; but that you would proceed upon it on Monday next.

*Major Beake* and others moved to read the order for the great debate, in order to the adjournment of it.

*Mr. Collins.* The witnesses lie in town at a great charge. I would have you appoint a day for hearing him.*

*Major-general Kelsey* and *Colonel Kenrick* seconded to proceed in this. They that take away rubbish contribute as much as those that build.

*Colonel Birch.* I never knew any thing prevent a matter of this nature. I would have Mr. Streete make his answer now.

*Mr. Streete* stood up to make his defence, but the Petition was called for first.

*Sir Richard Temple.* I hope the honour of this House shall never suffer by an implicit faith. I would have no Committee appointed, but refer all to the Committee of Privileges. I would have the great debate put on.

*Mr. Bodurda.* I move to put this business first off your hands, and if he have a copy of the Petition, let him answer to it.

*Mr. Streete.* This is the first time that ever I was accused of any crime public or private. I am glad, with Paul, that I have for my judges the representatives of three nations. I need neither fear your justice nor honour.

* Mr. Streete. See *supra*, p. 70.

There are two parts in the charge:—

1. As to myself.

2. As to my election.

1. That I was in arms. My father sent me to Oxford where I continued till February, 44. My mother sent for me to manage the estate at fifteen years. I returned to that City of Worcester then. I was neither sequestrated, decimated, nor secured. I hope to clear this by five hundred testimonies. For my being a papist, as some swear, I hope by honourable persons of this House to clear myself.

2. As to my election. I sent to my colleague when I was invited to stand, Mr. Moore, now my malicious prosecutor. I was chosen by men of honesty and faithfulness. Persons were appointed to except against any they pleased. Before tendering the poll, I prefaced that persons against me might stand by and except. I will acquaint you with the quality of the prosecutors. Neither mayor, alderman, nor common-councilmen, but only six of the common men, most of them alms-men. We offered a certificate from the substantial and well-affected citizens of Worcester.

An exemplar of piety, well endowed with learning, hath never aided, assisted, nor abetted against the Parliament, lived peaceably, given signal testimony, contributed to all taxes, duly elected, and duly returned. The Petition as to his uncapableness, altogether untrue. His prosecutor received money to prosecute. Divers hands to the Petition deny it. Poor alms people signed it.*

I pray to be admitted to disprove the Petition, and to answer the charge, and let justice be done.

*Mr. Collins.* On my own knowledge he was found as a person in arms. He said the mayor and aldermen were not subscribers.

The charge was read.

*Mr. Collins.* I saw much at the election. Some persons were there in arms, some papists, and men that received

* This paragraph seems to be a summary, by the writer of the MS., of Mr. Streete's representations and defence of himself.

alms. The sheriff had two or three persons that tendered their oaths to prove his being in arms; but the sheriff refused it, saying he had no power: which I suppose he had not. I would have a special Committee to examine the fact.

*Colonel Clark* moved for a special Committee.

*Serjeant Maynard.* I would have it referred to the Committee of Privileges; lest the House be troubled every day with matters of this nature.

*Mr. Turner.* I move that they attend the Committee of Privileges, in regard it concerns a disability of an Election.

*Mr. Weaver.* They will not, in two months come to a hearing. I would have a special Committee.

*Mr. Knightley.* More reports come in this Parliament from the Committee of Privileges, than ever did in so many days. If all the witnesses be not in town, let it be ten days hence.

*Mr. Streete.* I pray for postponement till Monday sennight for my witnesses to come to town. It is eighty-seven miles off.

*Mr. Collins.* My witnesses are here at charge, and it is hard to attend a week longer.

*Mr. Neville.* Let us do justice. Though the witnesses be at charge, they needed not have come up till a day assigned.

*Lord Lambert.* I move, to prevent charge, to hear witnesses *ex parte*.

*Sir Walter Earle.* It is fit the witnesses be confronted. I would have both parties and witnesses to attend. I would have the person to withdraw.

Ordered, that on Tuesday sennight the Committee of Privileges do take into consideration the Petition against Mr. Streete, and the whole business.

*Sir Walter Earle* and *Mr. Bodurda* moved to hear the great business, *sine die*.

*Mr. Bampfield* moved for a new election where the parties are disabled.

*Mr. Weaver.* I would have the electors ever disabled.

*Colonel Morley* seconded the motion.

*Serjeant Maynard.* There is no charge against the electors. We may be as guilty for suffering them to sit here a week.

*Mr. Knightley.* It was never denied but when Parliament sat at Oxford.* This House suspended for a time; but to disable counties, is of dangerous consequence.

*Sir John Carter.* It is a reflection upon the whole county. Very honest parties are in those counties. We did service in England as well as Wales. Let them have a new writ.

It was always cried, "Order it!" whenever it was moved.

*Major-general Kelsey.* I move for a new election in Serjeant Glanville's† place.

Ordered, that a new writ be issued out for Brecknock in Mr. Edmund Jones's place.

Ordered, the like for New Westbury, in Wiltshire, instead of Mr. Danvers.

Ordered, the like for St. Germain's in Cornwall, in Serjeant Glanville's place.

*Mr. Turner.* Two members are dead in law, and one in fact. There is one Mr. Hill chosen for Old Sarum. I move that a new writ issue out in his stead.

Ordered the like in Mr. Ashe's place.‡

It was moved again to take the great business into debate.

*Mr. Neville* moved that the Petitioners the other day at the door, be heard on Monday; but nothing would be admitted to bar the great debate adjourned to Monday.

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## *Monday, February* 14, 1658-9.§

*Sir Arthur Haslerigge.* In five years we have had greater mal-administration than in five hundred years before.

* See *supra*, p. 234. † See *supra*, p. 236. ‡ See *supra*, p. 241.

§ Here is a blank in the Diary. According to the *Journals*, "the House took into consideration a previous vote, before the commitment of the Bill, intituled an Act of Recognition." For the first speech I am entirely indebted to the *Goddard MS.*, pp. 174, 175.

We are a million in debt; some say two, some say three millions.*

The King demanded but twelve subsidies to maintain the army against the Scots,† and yet that was thought unreasonable, though it came but unto 720,000*l.*, a subsidy being but 60,000*l.* The Queen, by Mildmay her servant, demanded but two subsidies, and she herself thought it too much, and would have but one, that shall serve her turn.‡ But if we be in debt, as some say, three millions, that will be about fifty subsidies. If this be our case, what shall we do? The people care not what Government they live under, so as they may plough and go to market.§

* In a century from this period, by the marvellous operation of the funding system, that legacy of the Revolution, this puny national debt of three millions had advanced beyond two hundred; all expended to vindicate "the Act of Settlement," restrain French ambition, secure the balance of power, and decide the question "of Anjou and the Spanish crown." During the seventy succeeding years the national debt has reached the magnificent amount of eight hundred, ninety seven millions, while Britain was unconsciously rearing the first Republic of America, or generously re-establishing the monarchy of the Bourbons.

These wars, for which "toiling millions resigned their weal, and all the honey of their search," were all "just and necessary wars," so declared by kings and cabinets; or commended to the special patronage of Heaven, by the priests of rival nations, as if each had fondly expected that the Father of all the families of the earth would become a partizan in the sanguinary quarrels of his contentious children.

† In 1640, the Parliament demanded a previous redress of grievances, and was hastily dissolved. See *supra*, p. 54, *note* ‡.

‡ This Queen must have been Elizabeth. *Camden* says, (*An.* 1566) "she freely remitted the fourth payment of the subsidy that was granted, saying that money in her subjects' coffers was as good as in her own." *History*, (1675,) pp. 88, 89. For this politic moderation, *Rapin* thus accounts: "parcequ'elle ne prodiguoit pas son argent aux sangsues de la Cour, comme avoient fait ses Prédécesseurs." *Histoire* (1724,) vi. 198.

§ A natural, though degrading result, of that disregard to the education of the people which the Reformation under the Tudors, if it did not aggravate, had done nothing to correct, but which continued to prevail long after this period.

Carteret, Earl of Granville, an accomplished scholar and statesman, who died in 1763, left, among his papers, his last thoughts on a variety of subjects:—"He was not for having the vulgar taught to read, that

You have an army, your army raised by you. It must be paid. They are yours, and will never own any other. They are bold Britons, Englishmen that will never own any thing but a Parliament.

they might think of nothing but the plough, and their other low avocations." This *lettered* barbarian, who had a verse of Homer on his almost expiring lips; but would thus "meanly seek the blessing to confine," very consistently, and in the genuine spirit of the *man-trade*, "hoped never to see our negroes in America become Christians, because he believed that this would render them less laborious slaves." *Biog. Brit.* iv. Additions to, iii. 180.

That grand invention of the Sunday-school, which has exalted the name of Robert Raikes, "above all Greek, all Roman fame;" and the consequent benevolent and self-denying exertions in middle life, (so laudably patronized by George III., two princes of his family, and a few generous nobles,) at length stimulated the privileged orders to sanction the education of the people; though excluding from the mis-named national schools, that large part of the population who would not conform to the ritual of "the Church by law established."

These tardy patrons of plebeian education, labourers entering the field "at the eleventh hour," thus neglected, while securing "a prostration of the understanding," to provide for "the greatest good of the greatest number." Such, however, is "the aim of an enlightened and benevolent philosophy," which proposes, as well described by Dugald Stewart, "to diffuse as widely as possible, that degree of cultivation, which may enable the bulk of a people to possess all that intellectual and moral improvement, of which their nature is susceptible."

Among "errors in policy," exposed by Marchamont Nedham, in 1656, he instances "a keeping of the people ignorant of those ways and means that are essentially necessary for the preservation of their liberty." Hence, he complains, "implicit faith and blind obedience hath hitherto passed current, and been equally pressed and practised by grandees, both spiritual and temporal, upon the people; so that they have in all nations shared the authority between them.

"Though many quarrels have arisen in times past, between kings and their clergy, touching their several jurisdictions, yet the mysteries of domination have been still kept under lock and key: so that their prerogative remained entire, ever above the reach and knowledge of the people: by which means, monarchs, and other standing powers, have seen their own interests provided for, as well as the Pope's, in this mysterious maxim: "Ignorance is the mother of devotion." See "The Excellencie of a Free State," reprinted by Richard Baron (1767) pp. 103, 104. See, also, *Miscellanies* by Thomas Christie, (1789,) pp. 203—218.

Besides, we have an army and navy which must be maintained; a court also, and a council. We have a Dowager too: some say 20,000*l.*, others that 40,000*l.* per annum, will not serve her.

All the King's tables heretofore were maintained at the King's charge;† but now they must be all borne by the people, and out of their purses. Let this be considered, and let us not put ourselves into worse condition than Egyptians. Let us not set up that we cannot find materials to make good. I hope we shall never see an Act of Council to resume the King's, Queen's, and Prince's lands. I have, indeed, some Bishop's lands.‡ If the King be restored, I shall willingly restore the other.

If the Protector had nominated my son, (as he might have done,) I should have begged that the mal-administration might be called to account before you should have settled him, or you should have first settled his maintenance.

I desire you would charge boldly the mal-administration of the Government and the Council. I have seen this House set about with the Council. I have seen a charge against a secretary, Secretary Windebanck,§ that mushroom secretary. He looked as pale as ashes, and sneaked away.‖ This is no new thing in Parliament. I have heard a charge here against the Earl Marshall, the Lord Keeper,** and against the Earl of Strafford. Before we vote a Stadholder,†† Chief Magistrate, or Protector, let us call their mal-administrations to account, and that we may understand our condition first.

* This insinuation against the Dowager-protectress, was probably ill-deserved, though it agrees with Mrs. Hutchinson's language. Speaking of the late Protector, she says, "His wife and children were setting up for principality." *Memoirs*, ii. 208. See *Noble*, i. 129.

† From the revenue of the crown lands, purveyance and monopolies.

‡ See vol. ii. p. 423, *note* ‡.

§ See *supra*, p. 54, *note* ‡.

‖ Into France in 1641.

** Finch, who fled to Holland in 1641.

†† See *supra*, p. 176, *ad fin.* Marchamont Nedham, considering "what effects the continuation of power in the family of Orange had in the United Provinces," adds, "that people have wisely improved their opportunity, (the cockatrice being not fledged,) in reducing that family into a temper more suitable to a state and interest of liberty." See "The Excellencie of a Free State," p. 112.

We look upon a man as in a desperate condition, when he is afraid to look into his accounts and see in what case he is. Lawyers, officers, commanders of the army, that have great incomes, besides their rents, may be able to pay their rates; but the poor freeholder, the ploughman, the labourer, that hath nothing but the sweat of his brow, how shall we take care for these, how shall they be able to live?

It should have done well that this Bill had been brought in by your advice.

It is desired you would do nothing suddenly nor unadvisedly.

*Colonel Briscoe.* I shall premise two things.

1. That government is necessary.

2. That all forms of Government are in themselves indifferent; yet have their conveniences and inconveniences. They are not like white paper neither.

This Government of a single person is fitter for us. We have a government in possession. Our predecessors have taken the Government in possession. Good laws mend the bad.

It is not easy to wrest a club out of Hercules's hands. It must breed great distractions. It is fittest for us; most suitable to the ancient Government. If we now go to lay a new foundation, what a labyrinth shall we run into? To turn all over, of what dangerous consequence cannot be imagined.

Reciprocal charges and reflections should have been spared. We might all be so ingenuous as to acknowledge failings on both sides. I take not this to be the probable way of settling. We ought not only to provide for settlement, but for the liberties of the people. *Omne tulit punctum qui miscuit utile dulci.*

I shall speak a little concerning the liberties of the people. We have taken an oath which obliges to be tender. *Populus est prior et potior.* Though the Chief Magistrate be most transcendent, he must be less than the whole. Yet I would have every thing done in its season. But it is said, either do now, or for ever hold your peace.* I most cordially concur

* See "Sir Arthur Haslerigge," *supra*, p. 230.

with those that in this Bill would have an equal care of both. I am not for the first, unless the other be added. Jealousies on both sides must be secured by something that is material. The articles should be distinct, not to depend one upon another.

I would have two bills, one for the liberties of the people, another for the Chief Magistrate, with such limitations as shall be agreed on.

*Mr. Trevor.* In that quarrel, our business was always to look forward. For mal-administration, former times have been as bad. It was rather the fault of the time than of the men. I am far from justifying all that passed. Methinks we should be more impartial than only to look back five years.* If we look with an impartial eye, we shall find as many in the five years that went before. We had 120,000*l.* per month; now but 35,000*l.*, and excise and customs, besides great scarcity of money, and sales of public lands. Mal-administration was then complained of; men being both buyers and sellers of public lands; writs of error after judgment taken away.

For the question proposed. It was brought in clear, not to surprise any body. I shall ever consent to that law which is made by those that have power; but to consent to make that, *per se*, as it may depend upon that uncertainty as that he may be, or may not be; this shakes all laws since 48.

I would have a general Act of Oblivion on all that has passed since, but that we are settled by a law. But to allow all that was done by that Parliament as good, and to call all done by this Parliament bad, I cannot understand. A good law by a bad authority, is not so much as a bad law by a good authority.

I understand not that argument, of a natural right before any authority was, and that we are reduced to that natural right.† Admit it were so; then it entitles us and no other Parliament that have met together. If it were so, we are called by writ according to ancient laws and customs. When

* See *supra*, p. 256. † *Ibid.* p. 176.

we go to natural right, all other laws are gone. No man can say that we are chosen to any such ends. The consequence of this is, that there is no law in being. This House was not chosen to that end. We cannot assume it. The foundation to stand upon is a law, which cannot be repealed but by a power that made it.

*Mr. Knightley.* It troubles me to look on your Journals, and find so many blanks in that Bill. Since this day sennight, nothing has been done. I told you then I would not have come into the House, but that I owned the Chief Magistrate. We have no cause to rejoice in a Commonwealth. A Commonwealth was never for the common weal.*

When I came first into this House, we had two armies. A Scotch army entered, and, I will not say, invaded England. Another army was raised here to suppress them; another in Ireland.

We are now, by God's blessing, looking towards freedom, that ancient form of Government. It is some happiness that the single person is of good disposition, free from guile; but he is but a man. I have heard the Judges say, that the Chief Magistrate, man or woman, must be bound; law must not cease. We are now put into a posture to have the fruit of our laws. What were done since 48, are equal to me. Much good may it do to them that have good bits by these, but not to bespatter another. I would not have it.

It is said, when posts go up and down, they say you are where you were. There are only reports from the Committee of Privileges and Dismemberment.

I see nothing in this vote to take away your laws from you. Propose your vote singly, and then any gentleman may move an addition. When it comes to the negative voice and the militia, I shall insist upon it as much as any man; but to say, "we will not have this man reign over us,"† I cannot agree

* "He reckoned up the great charge that he was at in taxes and horses, and said they used a severity after men that they knew nothing against. What do you think of Mr. Knightley?" MS.

† See *supra*, p. 182, vol. ii. p. 392, *ad fin.*

to it. This previous vote is a devious vote. *Via recta est via tuta.* I desire you would put the question singly. You shall have my yea.

*Mr. Chaloner.* Many days have been spent in this debate. Let them write into the country what they will. It is a great business. If it be carried in the affirmative for the single question, I doubt all is gone. Part with that, and the Bill is done.

Where two questions come before you, you ought to take that first that concerns the liberty of the people, before placing any single person, or making a Protector, and leaving the liberties of the people in the wilderness. You are in a wood. I know not how you can justify it. You cannot discharge your trust to the people.

It was told you it was high treason to propound a question against a law in force. The single person is but the means, the prop; liberties are the end. It is said there is an interregnum. Then it is plain you have no Protector at all.

The declaration should have been a more solemn deposition, and witnesses to prove it, who were not persons that have places by it.*

The practice of other nations is to provide for the people, and then go to election; as in Bohemia. The reason is, because after election, he would never consent to making laws.

First provide your bounds and banks; and then I shall agree as freely as any man to the single person.

*Mr. Swinfen.* I move to the orders of the House, and not

* See this Speaker, *supra*, p. 130, and *note*. "The Commissioners of the great seal," says *Ludlow*, "attended the Protector for signing the declaration of the person to be appointed to succeed him. But whether he was unwilling to discover his intentions to leave the succession to his son, lest, thereby, he should, in case of recovery, disoblige others, whom he had put in expectation of that power; or whether he was so discomposed in body and mind, that he could not attend that matter; or, lastly, whether he would have named, or did name any other, is to me uncertain. But, certain it is, that the Commissioners were not admitted till the Friday following, when the symptoms of death were apparent upon him." *Memoirs*, ii. 611. See *supra*, p. 141.

to wander off the question. We shall rise, doing nothing. I would have every man to keep close to the debate.

*Mr. Harrison.* I shall not trouble you with any long debate. I am one of those that are sorry the debate has laid so long, for I think there is no such danger, nor comprehensiveness in the vote. It was never understood so, in the acknowledging of any King.

As the single persons have turned into tyranny, so the liberties of the people have been abused, like Pandora's box. All sects and heresies have grown up under the abuse of these liberties.* The liberties of the people are dear to us all. They are so to me.

I doubt the fervour of this debate is much losing by the delay. To limit, as is propounded, is but *splendidum nihil.* Nothing but inconvenience will come to the liberties of the people.

I served you here in 54. A melancholy man made a purchase, laid his hand on his mouth and said he had lost his 2000. If this vote pass thus limited, it is making him a Protector to-day, and none to-morrow. I would have the vote pass singly.

*Colonel White.* I am one of those that would have these two great stones of the foundation of this Government laid together with all the care that may be. The governor and governed are by the order of nature. The latter ought to precede; but I would have both go together.

There was an objection made at first that went far with me, viz. that the liberties of the people are safe enough in the settlement of the Chief Magistrate; but it is easily answered.

It is said your liberties are hedged in by his Highness's oath. I wish I had nothing to say against it. That general tie has been upon all the governors of the nation in all times. I shall like a little balk to the unsafety of these ties. You have been under several administrations. A government was brought in upon you I know not how; by whom assumed I know, his late Highness. An oath then, in the Instrument,

* See this opinion "preached up," *supra*, p. 208.

was as comprehensive as any one of the others could be,—to govern in all things according to the laws and customs of the nation. I would not reflect but only by way of argumentation. Notwithstanding the great obligation and tie of that oath, we had many impositions upon us no way consistent with it; witness the Major-generals, grounded upon a high-prerogative declaration, with power to confiscate men's estates, banish Englishmen, (a hard word in former Parliaments,) and put them into imprisonment and bonds. This, indeed, was executed by honest hands. The best part of it was, a design to put us into blood by some Cavaliers; therefore all Cavaliers are guilty. Neither major, minor, nor conclusion good. Ill logic. This was a high law of prerogative. It was done, and yet this under a security of his oath.

There was another authority, I know not whether of force or not. If men proceeded at law, men were sent for. I was sent for to the friend-makers, as they called them, and so named in the law; and this was the fruit of that oath: three men were imprisoned several years in order to trial. I think, if it was so, it was in order to a trial at the day of judgment, as by an instance at your table.*

The fault was not here in the persons, but in the extravagant power. I doubt, if you pass this vote, it will be charged upon you that you create prerogatives. You must be sent up to the Lords, for your limitations and troubles abroad may be told you, so as to put it off two or three years.

I would have these two go together, with the particle "and." If you separate them, if you please to give me leave, I will offer you a proposal to that purpose; "that the government of the Commonwealth of England, agreed upon in the Protector, shall be intrusted in his hands, under such limitations as shall be agreed upon by this Parliament," which will answer all ends.

*Colonel Bennet.* I rejoice that things come nearer to an end. I hope we shall come to a better agreement afterwards. I have been well taught in this debate.

* "Colonel Overton," MS. See *supra*, pp. 45, 212, *supra*.

All our governments were accepted and owned by all our allies abroad. So it is moved not to question any of these authorities. The honourable interest of the Gospel and the Protestant cause has been professed under all these administrations. I take all these to be lawful authorities, and the worst of them to be better than any yet propounded.

I confess I have no principle engaging me to any particular form of Government, exclusive of any other Government. It is light stuff for Government laid upon Nimrod, a great thief, or Adam's,* which was an economy rather than a Government. There is no text in scripture where they instituted a monarchical Government. I think it is profitable at this time to have a single person and two Houses. I liked a Commonwealth well; but not at this time, when we are so full of distraction. If you were a *tabula rasa*, I should be against putting the first question without the latter; but I would not part with a bad Government till sure of another, for posterity's sake.

I am convinced that it will not follow that by this vote you give away your liberties. I cannot believe the single person will do it. He cuts off himself, in cutting off this Parliament. He stands but upon a single vote, and the Parliament dissolved, the vote is also dissolved, and what will another Parliament say? There need be no jealousy, therefore.

I earnestly desire that the question may be so stated as to take in the liberties of the people too; to recognize him to be the undoubted Protector, and that this vote be part of a Bill for settling the Government.

*Mr. Stapleton.* I conceive we are not fit for the question at present. Deliberation of it will produce the safest conclusions. Those that brought in the additions for the liberties of the people, tend to unity, and this grave and honourable council ought rather to take in those things that tend to union than to disunion. What more acceptable than his Highness to marry these together?

We ought to look for having another preliminary. The

* See *supra*, p. 222.

additions seem to speak above-board. The other side have a reserve. The bottom cannot be fathomed.

There can be nothing spoken contrary to it. That seems to be kept in which is not spoken out. We seem all to agree to a recognition, but only with the additions. That your ship may come in most laden, take in the additions.

Pardon, if I make a little retrospect briefly, and all in order to the question.

I have heard a large narrative of things. I shall only be as one come into this nation in the time of the Commonwealth, when kingship was laid aside as useless, &c. Once devolved into a Commonwealth, we stayed not long there; though still asserted to be a Commonwealth ever since, under a Protector. This was to heal the disorder and confusion: as well to keep out the mischiefs of arbitrariness, on one hand, and confusions on the other hand: only a single person here was more conspicuous. Formerly a king and his realm: here, a Protector and a Commonwealth.

Those honourable persons and worthies that sat in the last Parliament thought fit to make some additions to the power, but not to take it from a Commonwealth, though first brought in with king; those worthies, finding a single person, thought to turn all things upon that hinge, but that startled: that was not then received. What others may do, I know not.

The Petition and Advice, as now stated, does not alter the form of a Commonwealth, to remain in that estate still. Therefore, with respect to those eminent worthies that then were, let us have the hinges another way. A dwarf upon a giant's shoulders may see farther. A single person we have all asserted. We may also take in a Commonwealth. Therefore, lay down that maxim, and such may be the resolution.

Men give not counsel to affairs, but affairs to men; not always good counsels, well digested. If you consider affairs in the providentials; all providences have rather bent that way, to respect the liberties of the people; if intrinsically they do not follow. The high refined spirit of the nation looks that way, as an honourable person emphatically observed. Methinks we have left that track of providence, we have some-

what turned out of the way; no wonder at our exorbitances in council, &c.

*Mr. Gerrard* took him down and said: We have heard a long sermon. It is late to have another. I am informed he is not capable to sit in this House. He has been Chaplain to a regiment and in arms too, as I am informed.

*Mr. Reynolds* said, Let him be never so uncapable, he ought not to be taken down; so the gentleman went on.

*Mr. Stapleton.* It is necessary to take in the additions, that the Government may be just. The great Parliaments declare that the additions were intrinsically in the people. It will not be repugnant to the justice of this House to give the people what is intrinsically their own. The Declaration in 41* proves it. The late King disputed them. The sword determined it for the people, to be theirs by way of conquest. If it had not been clear, yet the conquest gave them a right; but I need not that argument. There cannot be an honourable settlement without it.

The eyes of all nations are upon you for this event. A ticklish state of affairs is at home, and in Europe;† never so ticklish as now. Therefore do things for our honour. A barring of the negative voice in the Instrument of Government, was a tie upon him. By way of honour and compliment, it gave him some days to consider of a Bill. If he refused, it passed.‡

We ought to go as far from the corrupt form as we can, lest it bring in the old line. Let us lay the Government so safe as to prevent that. They have been the cause of great wars, and if those live embers are not wiped away, they will revive again. Let nothing be done rashly, that may surprise the people. I hope before this great council rise, they will lay such a careful foundation as there shall be no exception against.

A great danger of evil counsel arises from favourites and sycophants, as has been told you. A man will feel better to be put into a capacity not to be able to hurt, than to have

* See vol. ii. p. 435, *note* *. † See *supra*, p. 128.

‡ *Parl. Hist.* (1763,) xx. 257. See, in 1656, vol. i. p. 20, *note*.

power to hurt. It will be more safety and honour for us, to make the vote as plain, perspicuous, and with as much unity as may be. If we overlook the great concerns of the people that we represent, it is a question whether they will recognize us.

I have discharged my duty to his Highness in praying those land-marks may be set up, that he may not be split; my duty to the people in caring for their liberties, my duty to you in desiring that both may be joined for unity's sake.

*Mr. Speaker* summed up all the debate.

We are indeed in a wood, a wilderness, a labyrinth. Some affirmative, some negative, which I cannot draw into one question. Put the question singly.

*Colonel Kenrick.* If you let the question go together, I am ready to give my *yea* or *no;* but if you put it singly, I desire to speak. The title, Protector, brought in a Government with it, this brings in no Government with it. Adam, being put into the garden, had a Government given in with him,* what to do, and what not to do.

I take the Petition and Advice to be out of doors. The reason why it was desired was, that his Highness would take the Government because of plots and dangers.† The Bill for Marriages is imperfect.‡ The members from Scotland make us imperfect.§ We have it not made out that he was declared Protector.¶

Now, in conscience, am I not bound to give my *no*, because they are not put together? Though I have a good mind to it, I must give my negative.

*Mr. Reynolds.* I know not how, at this time of day, and against the sense of the House to speak. Yet I must satisfy my conscience, though I offend against your sense.

Some cried out he had spoke.

* See *supra*, p. 266. † See vol. i. pp. 354—356, 362—366, 378.

‡ See *supra*, p. 37.

§ According to *Ludlow*, his party "endeavoured to remove the Scottish and Irish members who had intruded themselves into the House." *Memoirs*, ii. 626.

¶ See *supra*, p. 263.

*Sir Henry Vane.* He ought not to have been taken down.

*Mr. Grove.* The chair ought to direct us to keep to the point. He began before with his oath, and so began again.

*Mr. Reynolds.* I hope that gentleman that is a conscientious man will not be offended that I began with my oath. I took the oath, *uno flatu*, and I desire the vote may be *uno flatu*, both for the single person and the people's liberties. A gentleman said, the liberties of the people ought to be preferred before any family in the world. He was sent to the Tower for it, and after he had stayed without two years, was called in again.

*Colonel Fielder* and *Mr. Bodurda* took him down, and appealed if he did not tell this very same story on Friday.*

Let us have this question now, and if we be of another mind two years hence, we will agree with him.

*Mr. Reynolds* sat down.

The question was put in the affirmative.

*Colonel West.* I am for the first part of the question, but not without the other part. I except against the word "undoubted." I shall forbear to speak my doubts at present. I shall only speak, that the militia be preserved to the people, as necessary at this time. I would have it done before you rise; as so natural to the people that you cannot deny it. By the law of the nation, I can go into any part of the nation with my sword, to defend myself, and not ask leave of another. I may kill the assailant, and defend my house by force against force. I take the law to be so. The tribe that sent me hither, and another hopeful person in my eye,† how shall we answer it to the people that sent us? We must have money before we rise; but they will say, what have you done? Have you given unlimited power to a single person?

The place that I serve for, is impoverished by this very same thing. I was sorry to hear those reflections upon the former Parliament. The Appeal hangs yet upon the file. It is not a dubious thing. I am bold, and necessitated by those that sent me hither. We formed ourselves into a garrison to

* See on "Harry Marten," *supra*, p. 212.

† Mr. Henry Porter, member with Colonel West, for Lancaster.

defend that natural power of having the sword in our hands. We had no bye ends. We suffered our houses to be on fire all about us.

I would not have us contend, so much as in arguments, against it. I hope those that are in the army would not desire to be in the army upon another principle. Divers persons have deeply engaged. I have heard it said of this gentleman, that he is without guile and without guilt;* and I hope he will say, it is good news from this House, that his interest and the interest of the people are so well matched together. It was minded well by Colonel Terrill.† I shall not trouble you with repeating the question; but put them together or put neither.

*Sir Walter Earle.* The militia was not the quarrel. I would have the question put, whether you will have any additions.

*Mr Reynell.* I differ from that gentleman. The militia was the ground of the quarrel.

I stand not up to speak against a single person, but against a single person so clothed, or rather armed, by the Petition and Advice. Where you say "undoubted," you own that law by which he claims. But if the power is in that law, I am loth to remember it.

It was told you by a gentleman from the floor,‡ that this was the greatest means and art to enslave the people that ever was, with the Petition and Advice. I shall not mention the reflections. There are good men on both sides. Weigh those great powers of the Other House. I have not heard that argument answered, that the Other House is dead by the second Article.§

*Colonel Terrill.* It hath been told us, that we were men of intemperate spirits that served in the last Parliament. This was declared July 3, 1658. A godly minister told me, "I was loth to go up and tell the people you were such bad men." Divers gentlemen look to see whether the spirit of

* See *supra*, pp. 27, 223. † See *supra*, p. 226.
‡ Perhaps Sir A. A. Cooper, *supra*, p. 228. § See *supra*, p. 223.

young gentlemen* will incline to give away your cause; whether you will destroy the foundation you have built upon. I will meditate the words of the Psalmist. Posterity will not applaud the same,† if we leave it thus; if you clothe the Chief Magistrate with these kind of powers.

An observation I have met withal, of a great reason why the Turkish Government stands, because no lawyer ministers; but you have all such ingenious persons here. Are you able to bear this?

1. To the negative voice. 2. To the militia. I shall offer whether it is not rational to join these, as declared 20th May, 1642. I shall leave that to the learned, that understand that about the negative voice. Their bows did not abide in strength that opposed it. The militia was clearly declared to be yours in 42, and committed to the care of Serjeant Browne. A declaration of Lords and Commons.‡ I shall offer nothing done under the force.

A declaration, 13th March, 1647, in answer to the Scots, I shall offer to you. I shall read the declaration. "As to the militia as the principal ground of our quarrel, the King cannot make laws without them. It makes the King capable of doing all harm." What can a man say that speaks after the King? What can I say, that speak after the great declaration? I would have all taken together.

*Sir John Lenthall.* I move that you recognize his Highness under the style and name of Chief Magistrate, to govern the nation according to the laws, &c.§

*Major-general Kelsey.* I shall not trouble you long. I hope we are not jealous of one another; but only jealous for the liberties of those we serve.

He repeated the debate, and that some persons were not satisfied; but they should be excluded by the first vote. Therefore, he would have a previous vote that nothing shall be binding in this vote till all be passed.

*Sir John Northcote.* I can give my vote neither way, if

* See *supra*, p. 232, *note* †.

† See *Ps.* xlix. 13.

‡ See vol. ii. p. 435, *note* *.

§ "As he had offered before." MS. See *supra*, p. 122.

you put the first question. I would have you put the question if you will have any additions.

*Mr. Jenkinson.* I move to add to the question, that nothing bind by this vote till the Bill be passed.

*Mr. Starkey.* I am an earnest suitor to you, in order to the good of the people, that you recognize his Highness to be Protector.

*Lord Fairfax.* I desire that the militia and the other question may go together, that we give it not out of our hands to any single person, but that it be intrusted where it may be serviceable to itself and to the people.*

* It was little to the honour of this brave general, who had successfully wielded the military power of the Commonwealth, that he was prepared, or, at least, persuaded, (see *supra*, p. 48, *note* †) so soon after this prudent and patriotic declaration, to intrigue, in concert with Monk and the Presbyterians, for the unconditional return of regal government; thus betraying the cause of "the People," by giving every thing into the hands of a "single person," and such a person as Charles Stuart, who had already commenced his career of profligacy, and who, at length, earned the following character, from the pen of Horace Walpole, Lord Orford:—

"Fortune, or fair or frowning, on his soul
Could stamp no virtue, and no vice control.
Honour, or morals, gratitude or truth,
Nor learn'd his ripen'd age, nor knew his youth.
The care of nations left to whores or chance;
Plunderer of Britain, pensioner of France;
Free to buffoons, to ministers denied;
He liv'd an atheist, and a bigot died."

See "An Epistle from Florence, written in the year 1740." *Dodsley* (1751), iii. 82.

The expiring royal libertine is, perhaps, incorrectly charged with bigotry. He might be scarcely conscious of the solemn farce got up by Father Huddleston, and in which, *in articulo mortis*, he was the chief actor. As to the other charge, Charles II. "said once" to Bishop Burnet, that "he was no atheist," though, according to the Bishop, "he seemed to have no sense of religion," but at "prayers and sacrament," to which, even after his marriage, "he usually came from his mistresses's lodgings, to the particular reproach of all that served about him in the Church, he took care to satisfy people that he was in no sort concerned in that about which he was employed." (See *supra*, p. 67, *note*.)

*Captain Baynes.* I hear a great debate about cognize, or recognize. I move that the question be, whether recognize shall be part of the question.

*Mr. Speaker* was going to put the question for an addition.

*Sir Henry Vane.* If it pass in the negative, nobody can speak to the terms. First word your question.

*Mr. Attorney-general.* I agree that if it pass in the ne-

Yet the king, it seems, had not satisfied Archbishop Sheldon and the rest of his courtly ecclesiastics, for, after the Savoy Conference, in 1661, on a revision of the liturgy, "a new epithet, *our most religious king*, was added to the king's title, that gave great offence, and occasioned much indecent raillery, and those who took great liberties with him, have often asked him, what must all his people think when they heard him prayed for as their most religious king." O. T. (1724), i. 93, 175, 183. Thus according to the versifier before quoted:—

"Extent of ill from kings at first begins,
But priests must aid, and consecrate their sins.
The tortur'd subject might be heard complain,
When sinking under a new weight of chain,
Or, more rebellious, might perhaps repine,
When tax'd to dow'r a titled concubine,
But the priest christens all, a 'right divine.'"

That compliment to royalty, *our most religious king*, which Bishop Burnet himself must frequently have repeated, when priest or deacon, and, at length, ordained priests and deacons to repeat, is still enjoined in the established liturgy; and, it may be said, fairly enough, as scarcely any king can reign, to whom it would be less appropriate than to Charles II.

It is here worthy of remark, with what submissive caution and extreme candour, rather than with christian truth and manly freedom, this interpolation of the liturgy, in compliment to the restored Stuart, so well exposed by Bishop Burnet, was treated in the following passage by those gentle reformers, the pious and learned authors of the "Free and Candid Disquisitions relating to the Church of England." (1750).

"The expression in the *Prayer for the High Court of Parliament*, that is most excepted to, is very well known, and need not here be specified. It might, perhaps, have been better, if it had not been put in at first; and it is certain there was no necessity of inserting it. Whether it may not now be exchanged for another epithet," (they recommend *most gracious Protestant King*,) "which shall be less exceptionable, is a question we would only propose, and leave the resolution to proper judges; though we think we could place the matter in such a light as would evidence the necessity of attending to such a question." p. 116.

gative, you cannot speak to the wording the question. I would have you put if the word, recognize, shall be part of the question.

*Mr. Neville.* The word, recognize, gives away the question. It betokens slavery.

*Mr. Goodrick.* We were not slaves in Queen Elizabeth's time, and it was the language then.

*Mr. Scot.* The grounds of the word recognize, then and in the times of *Hen.* VIII. and *Hen.* IV., were different from ours. The reason for Henry IV.'s recognition, was because Richard II. was alive, and his competitor. It was in contradiction to competitors; only to distinguish persons. An Act of Parliament passed to legitimate Queen Elizabeth, because it was questioned whether she were fit to reign or no. King James came from another kingdom and another family. There was no recognition to King Charles, and no need of it. He had no competitor. I can decognize Charles Stuart and that family, but recognize I cannot. It comprehends the merits of the question.

We must now speak or ever hold our peace. It was told that the great seal was sent for, two or three times, and either his Highness was not so well, or I know not what; it was sent back again.* The Privy Council made him. I would have him to be your creature, and he will be more tender of your liberties and privileges. If I recognize, I must be satisfied how he was declared, according to the Petition and Advice.

We are not ingenuously dealt withal, for this is but a wing of the debate, and the wing will be out of your reach. If this pass, you will take a little breath between that and caring for the liberties of the people; and then money must be had for this Protector.

I was saying I would be a slave, but I would not neither, till I needs must. If I could have lived safely in any other part, I would not have lived here. I would be content it should be set upon my monument,—if it were my last act I own it,—I was one of the King's judges.† I hope it shall not

* See *supra*, p. 130, *ad fin.* † See *supra*, p. 110, *note.*

be said of us, as of the Romans once; *O homines, ad servitutem paruti!* He that would take up half a vote, as to the distribution of the members, will not he take up half a vote if you recognize? Get your liberties as you can. It is a lame question without the other part.

*Mr. Bodurda.* This gentleman is mistaken of the debate upon the negative voice or militia, which was never talked on till after the previous vote. It is said, recognition is only fit in case of competition; surely Charles Stuart is a competitor.*

*Mr. Higgons.* True, recognize is a French word; so is Parliament and declaration. If we exclude all French and Latin words, we shall not have words left in our own language to express ourselves.

*Mr. Disbrowe.* We shall, at one dash, root out the liberties of the people, if we go now, *de novo*, to make a Chief Magistrate. I doubt, if we have not a Chief Magistrate in being, we are in a sad condition, and have taken God's name in vain. I doubt if we acknowledge it not, as not to be in being, other Parliaments will question what we have done, and recognize every Parliament.

*Sir Anthony Ashley Cooper.* The word, recognize, goes to

* This speaker's apparent disaffection to the now exiled royal legitimate, was soon convertible; like that of Lord Broghill (who was equally disinclined to "fall, uncourtly, with a falling court,") towards "Charles Stuart and the rest." See *supra*, p. 136, *note*; vol. i. pp. 357, 358.

"A court," says Dr. Harris, "is too frequently followed because of the loaves and fishes which are to be found there. When these fail, it is no more regarded. So that it is not the desire of profiting the public, the love of the sovereign, or any of those specious pretences which are made use of by these kinds of men, that, in fact, do actuate them, in accepting and executing their various employments.

"It is not uncommon to see such as have been favourites and counsellors under one prince, enjoy the same under another, who has ousted him of his dominions, and deprived him of his bread. We are not to wonder, therefore, that those who were preferred by Cromwell, should be disposed, when their interest seemed to lead that way, to reconcile themselves to Charles, in order to take care of themselves in the full extent of the phrase." *Lives* (1814), iv. 251.

things and not to persons. I appeal to the long-robe men, if recognize take not in all the laws, Petition and Advice, and all powers given by that.

*Mr. Gott.* We have been debating by wholesale: now in words; next will be in syllables; and we shall, I hope, at last, come to the syllables *yea* and *no*, to determine all. We have had Stadtholder, Sequestrator, Plunderer, and harder words offered to us. The word, recognize, signifies no more but a bare acknowledgment of what is,* be it by the Petition and Advice, or what way soever it be. It is *se debui* makes the debt, not the *recognovit*. If I acknowledge a man my son, it respects no time past. They are plain, innocent words, words *in terminis*, in the oath. The oath is nothing but the echo of what he is. Nobody without doors doubts it.

As I would have the Parliament to speak nothing but what is just, nothing but truth, so to speak nothing but what is sense. It is to say he is a Chief Magistrate without a Chief Magistracy. It is *appositum ab opposito*. Let us take in all. If we must take in this, we must take in the Protestant religion and confession of faith; and where you will end I know not.

I am against the additions, because I am for the question.

*Mr. Speaker.* I move that I may withdraw, unless you will resolve to adjourn.

Mr. Speaker, by consent of the House, withdrew, and divers members, at past three went to dinner, and an hour after the Speaker returned to the chair.

In the interim, a heat happened between Colonel Okey and Mr. Hampden;† relating to his differing from his former principles.

* "Recognise or agnize, acknowledge, all one;" *supra*, p. 185. Yet see p. 179. *Ludlow* says, "It was desired that the words in the Declaration, of *recognising* him, might be altered for *agnising* him; that so his right might appear to be founded upon the consent of the people represented in this Assembly." *Memoirs*, ii. 624.

† William Hampden, third son of John Hampden, was now member for Wendover, and one of the court-party. He died in 1675. Mr. Noble

Sir Arthur Haslerigge said he would never speak to him till he avowed his former principles, and said, "Those that have not bled, can bleed as well as those that have bled, if occasion be.

*Sir William Wheeler* moved to adjourn, before he spoke to the question.

*Sir Arthur Haslerigge* seconded.

*Sir William Wheeler* went on, and moved to change the word recognize for an English word, "acknowledge."

*Serjeant Maynard* seconded it.

*Mr. Higgons.* I move that both words stand, recognize and acknowledge. It is but *bellum grammaticale*, that we are upon.

*Mr. Speaker* was going to put the question.

*Colonel West.* I move not to put the question upon us, till you take in the militia and negative voice.

*Sir Henry Vane.* I move that the question first be put, whether you will leave out the word, recognize.*

*Mr. Hewley.* If neither recognize or acknowledge shall stand, we shall have no word.

*Mr. Bulkeley.* I am indifferent which of the words be in. Acknowledge is as plain an English word as can be.

*Sir Arthur Haslerigge.* I am against both the words, recognize and acknowledge. I see it is likely to go against us; yet I would make as much of a bad matter as I can.

This looks like a new warfare. We come to set up votes that are live quarrels, like York and Lancaster. I believe, in my soul, it will bring a war upon this nation, alive or not alive.

*Serjeant Maynard* took him down.

There is no likelihood of a war between the two words. There is nothing of life against life in those words.

says: "He was much trusted and beloved by the Protectors Oliver and Richard. He went with a commission into Ireland, and was dispatched by the Lord Lieutenant Henry Cromwell, to the Protector Richard, with the proclamation, that had been issued upon his Highness's accession to his sovereign dignity." *House of Cromwell* (1787), ii. 76.

* See *supra*, p. 274.

*Sir Arthur Haslerigge* went on.

I intended to move for two other English words, which our law knows, constitute and appoint. I except against the words, undoubted, under such conditions, &c.

If that fail, we may go out and beg, "Lord have mercy upon us!"

*Mr. Bulkeley.* I move the last speaker to repeat the last words, that usually are of most moment.

*Sir Arthur Haslerigge* stood up, and said over again the last words.

*Mr. Turner.* I see we agree about the thing, and only disagree about the words. I would have both recognize and declare laid aside, and say only, that his Highness is Lord Protector, and that will satisfy all.

The question was put, if the word "recognize" shall stand, both in the affirmative and negative.

*Mr. Sadler* was spied to stand up before the negative was put, and went on,

I understand not the word, recognize; but it may fetch in more. The whole matter may come in upon that question. For aught I know, I shall never speak more. I would entertain strangers kindly, they may be angels; a saying in scripture.* If only I and my family were to be sold away, but souls and consciences will speak. If we hold our peace, the stones will speak;† our ancestors' tombs will speak.

I find not the Protector's name in the oath. It is only to his lawful rights. There was as strong an oath of allegiance before, as could be. You came to dispute the King's rights and person. Recognition speaks to acknowledge a debt. Take in that word, and you acknowledge a debt. A recognition was the solemnest way of attesting a debt, in the presence of the King, according to the ancient custom of the nation. An acknowledgment of a debt before the King, was not only of a debt, but a duty.‡ But, on my soul and con-

* *Heb.* xiii. 2. † An allusion to *Luke*, xix. 40.

‡ "*Recognizance*:—a bond wherein a man, before a lawful judge, acknowledgeth himself to owe a certain summe of money, to the King if

science, pass this, and it will be out of doors to consider this after.

I should profane if I should in terms express how much I honour his now Highness and his father. I would have it scanned, what it is to be Supreme Magistrate. I shall go as far as any man, if I may understand. Is it to be High Constable, Supreme Sheriff, or any thing of that kind?

I may acknowledge a supreme judicial executive power, I speak to them that know the law. Either supreme

1. As coming in by way of inheritance and succession, and so by the common-law: or

2. By some positive Act. Not only Supreme Governor in respect of power, Supreme Majesty, or Supreme Magistrate set down in the throne.

You give it away, you play it away; you do not sell it, you have nothing for it. I speak it here for the life and liberty of the Protector. I stand here to plead for him. The more power is added, the sooner will he down.

You leap into all regal majesty, if you confirm him in that authority. It will be declared in Westminster Hall, that it is an ill foundation. Consider the nature of the thing. It matters not what the words be. If you declare him to be Supreme Magistrate, and say not what it is, you give up all fought for lately, body, soul, and spirit, a negative voice; you declare him to be whatever he does think himself to be. He shall rule over slaves, not over fools.

It was not very lately that either heir or successor was debated in Parliament. If he thought himself undoubted, he would never come to you to ask it. You beg the question, you give up all that can be given, House of Lords, and power to dissolve you by law; all that ever is in the Petition and Advice; all that ever he is tied up to by his oath. I love those that love themselves, so that they do it happily and well. God never curses us, nor enslaves us. I believe him

he faile in performance of a condition thereto joyned." See "Interpreter of Hard English Words." (1639).

wiser, in my soul, than to desire to rule over those that will make themselves slaves.

There is a law in France, that after a man has lost his suit he may speak nine days. I will come here to speak nine days and nine nights. I will not go to any closet to pray, but I will pray here.

We are taught to cry down royalty, as the head of the beast. I am afraid we shall make him the image of that beast, to give him an unlimited power. If a man, he rules over men so far as he is bounded by the right reason of man; but if over beasts, he must be a beast. Water is not then free when it covers all the face of the earth, but when it is in its channel; so man, when out of the channel of reason.

If you please, make a Committee, really to consider how you may not take his just rights, nor lose your own just rights. I hear say, I am bound by my oath. If you make me not free, I must send it up to the Other House. I am sworn. Another House they are, *de facto*.

This is worthy of the serious consideration of the wisest men about you.

*Mr. Speaker.* The sun does not stand still, but I think you do not go forward.

The question being put, that this word, "recognize" shall stand in the question.

*Mr. Speaker* declared for the *Noes*.

*Mr. Dunch* and *Mr. Fleetwood* declared for the *Yeas*.

*Mr. Speaker* declared the *Yeas* to go out.

*Colonel Birch* said, the *Noes* ought to go out.

*Sir Henry Vane.* The *Yeas* ought to go out.

The *Yeas* went out accordingly.

*Yeas* 191. Colonel Cook and Colonel Grosvenor, Tellers.

*Noes* 168. Sir Arthur Haslerigge and Mr. Neville, Tellers.

So it was resolved, that this word, "recognize," shall stand in the question.

The main question* being put in the affirmative,—

* See p. 32, *note*, 87.

*Sir Henry Vane.* I wish I could speak out; for it deserves it. You had another question, whether you should have any addition.*

*Mr. Weaver.* I would have no question put upon an addition, but would have all the question put together; otherwise we shall not unanimously concur. For those that are for the addition, and lose it, then they must give their vote against the Recognition, which I would not have.

*Mr. Knightley.* Put the single question first, which is the substance of the Bill, and I hope we shall all be affirmative in it.

*Mr. Scot.* If I cannot have the qualifications, I for one shall give my negative.

*Sir Arthur Haslerigge.* I would have the question put, whether there shall be any addition or no.

*Serjeant Maynard* and *Mr. Turner.* Though it pass in the negative now, yet it bars not your Committee from making an addition.

*Mr. Attorney-general.* If the question be carried in the affirmative, that you will have an addition, then you are in the wood again. Your addition may be made at the Committee. I am against an unlimited power. My gown binds me to it. Let us agree in this. I am confident we shall be ingenuous.

*Colonel Morley.* As all is expressed in the oath, why not put all together in the question. Let us not part them.

*Lieutenant-general Ludlow.* I wish the vote had gone in the negative. The main question would have passed more unanimously. I cannot agree with the word, "undoubted." Many arguments have been offered against it, but none answered, but by "Question, question!"

It must either be by divine right, by conquest, or by common consent. By divine right he cannot be. Moses and the judges had a call from the people.† It was said the King should not multiply unto himself horses,‡ meaning power. You cast off God, if you cast off that question. He has not

* See *supra*, p. 116. † See *supra*, pp. 147, 222.
‡ *Deut.* xvii. 16.

conquered you, his father has not. Consider how you give it away by wholesale, and beg it by retail.*

Let not a vote pass by a small number of men, haply that by your Petition and Advice are not qualified.† It is the reason of your vote must carry it abroad.

We are ground between two millstones. The other House is a sword. I must say so. Either bring the sword to the property of the nation, or the sword will bring property to them. Though a Commonwealth be odious amongst you; yet it is not your wisdom to depart from it.

I doubt this word, recognize, admitted, will cause a great many negatives to the main question. I would have the questions go together.

*Captain Baynes.* Without the additions put in the question I must give my negative to it. Put it either that you will have both together, or whether you will have an addition.

*Mr. St. Nicholas.* I am against the word, undoubted. A rule in law, *nil notum Judici, quod non notum Judici aliter.* Let it appear judicially before you by the instrument whereby declared.‡ Let that be on your journals. If there be not such an instrument, but that a title must be sworn out, it might have been also sworn out for the gentleman§ on the other side of the dike.

I would have it but by way of appointment. If you take not care, now, for the limitations, I never expect to hear of them again.

*Mr. Disbrowe.* I shall speak to the word, undoubted.

He had undoubted power to declare, and did, undoubtedly, declare.||

1. He was proclaimed in all the three nations, undoubtedly.

2. He, undoubtedly, called us hither as undoubted Protector.

If some limitations be not put in, we shall not be able to

* See *supra*, pp. 169, 171, 172. † See *supra*, pp. 29, 71, *notes.**

‡ See *supra*, pp. 263, *infra*, p. 288, *notes.*

§ Possibly meaning Charles Stuart. See *supra*, p. 161, *ad fin.*

|| Yet he does not attempt to prove the late Protector's declaration.

answer it, either to God or man; but it is not seasonable now. I would have you put the question, if, at this time, additions shall be to the question; or put it, if now it shall be put.

*Colonel White.* I know, by right of the House, we must have the other question for additions; but I shall only speak to the word, undoubted. That was not in the Bill: I wonder how it comes in now. It is not a salutation from all the counties* that will make the title, undoubted. I would have that word left out, and the question put for the additions.

*Mr. Speaker.* The word, undoubted, came instead of the word, lawful.†

*Mr. Fagge.* I would have the word, undoubted, left out.

*Mr. Salway.* It is late, and if you go any further, you will make it but a work of darkness. I would have you adjourn.

*Sir Henry Vane.* If you will not listen to the voice of my worthy neighbour, let us have candles, that we may see to put the question.

*Mr. Jenkinson.* I move to leave out the word, undoubted, or else put the question to leave it out.

The question was put, that the word "undoubted" shall stand in the question.

*Mr. Speaker* declared for the *Noes.*

*Sir William Lawson* declared for the *Yeas.*

*Mr. Trevor.* I move rather to yield than divide the House. I would yield it.

So it passed in the negative.

The question being put that candles be now brought in.

*Mr. Speaker* declared for the *Yeas.*

*Lord Lambert* declared for the *Noes.*

*Sir Arthur Haslerigge.* I move that the *Yeas* go forth; because it is extraordinary to sit with candles.

The *Yeas* went forth.

* See *supra*, pp. 158, 161, *notes.*

† "Lawful successor," see *supra*, p. 87, *note**.

*Yeas* 209. Sir Richard Temple and Mr. Ansley, Tellers.

*Noes* 153. Colonel Eyre and Mr. Howe, Tellers.

Resolved, that candles be now brought in. They were brought in accordingly.

*Sir Arthur Haslerigge.* I never knew good of candles. Sir William Widdrington brought in two candles from the clerk, against the direction of the House, and was sent to the Tower next morning.*

*Mr. Bampfield.* I move to alter the words of the question, and to say, Richard Lord Cromwell is Lord Protector, and not that Richard Lord Protector is Lord Protector.

I would not have the question put now for the additions. If it be carried in the negative it is not fit to lie upon your books. It bars not your Committee.

*Sir Henry Vane.* Either put this question, or else you are not so ingenuous to exclude our votes. If this addition be left out, you direct your Committee to pass a short Bill to recognize, without passing any thing for the other.

*Mr. Solicitor-general.* I like ingenuousness and clearness. If this vote pass not into a Bill, it binds neither this House, nor any without doors. I would have a vote that nothing be binding till all be passed.

*Mr. Neville.* You are now where you were in the King's time. He had a long hereditary right, which, without the sword, could not be obtained. Unless we speak now for the people, we must for ever hold our peace.† I would have the vote for an addition.

*Mr. Knightley* seconded Mr. Solicitor-general's motion for a previous vote.

*Sir Arthur Haslerigge.* I am one of those that fear that when this is gone, all is gone. I have been as much deceived in men as ever was man. I will trust men no more.

I would have nothing of the negative voice and the militia go along with it; or if any thing shall be added, I am clear we cannot meddle with the militia nor negative voice in this Bill.

* See vol. i. p. 36, *note.*

† See *supra*, p. 230.

1,300,000*l.* per annum,* was taken, notwithstanding the previous vote.

*Sir Walter Earle* and *Serjeant Maynard.* A vote does not oblige the Parliament. If it never pass in the Bill, it never passeth for a law. If that question go against them, why do they strive to put it under that danger? Then they may propound any thing at the Committee: so they conclude themselves. Would have a previous vote, that nothing shall bind, &c.

*Sir Anthony Ashley Cooper* differed from them.

If it pass in the negative, you are excluded at your Committee. A proviso may be brought in. Votes will remain on our books when we are gone, and it will appear that we had also care of the people. You will have it committed and nothing appear. I would have both appear on our books together.

*Mr. Bodurda* offered an expedient that nothing should be binding till all was passed; and that before the Bill was committed, provision should be made for the people's rights and liberties.

That would not satisfy the contrary party, for after a strong proposal for it, it was yielded on the other side, that the question should be put, if any addition should be made to the question.

The question was put, that this question be now put, and it passed in the negative, by above one hundred votes.†

* See *supra*, p. 168, vol. ii. pp. 26, (Mr. Croke) 457, 458, *note.*

From "A Statement of the Amount of the Public Revenue at the commencement of each reign," it appears that the "Annual Income," in 1625, on the accession of Charles I., was 895,819*l.*; in 1648-9, on the Establishment of the Commonwealth, 1,517,247*l.*; in 1660, at the Restoration, 1,800,000*l.*; in 1760, on the Accession of George III., 8,800,000*l.* "and in the year, ending 5th Jan. 1808, 75,446,626*l.* 11*s.* 6*d.*"

† "The House was divided. The *Noes* went forth.

"*Noes* 223. Mr. Henry Fitz-James and Sir John Copplestone, Tellers.

"*Yeas* 134. Sir Arthur Haslerigge and Mr. Henry Neville, Tellers.

"So the question passed in the negative." *Journals.*

The question being propounded, that it be part of this Bill to recognize and declare his Highness, Richard, Lord Protector, to be the Lord Protector and Chief Magistrate of England, Scotland, and Ireland, and the dominions and territories thereunto belonging; the question was put, that this question be now put; and it passed in the affirmative, (*paucis contra.*)

So the main question being put, it was

Resolved, *ut supra.*

*Mr. Trevor* then offered, of his own accord, to the end the other party might not go away displeased, that it also be resolved, and was, with but one negative* to it,

Resolved, that before this Bill be committed, this House do declare such additional clauses to be part of the Bill, as may bound the power of the Chief Magistrate, and fully secure the rights and privileges of Parliament, and the liberties and rights of the people; and that neither this, nor any other previous vote, that is or shall be passed in order to this Bill, shall be of force or binding to the people until the whole Bill be passed.†

The House then rose at ten; all parties well appeased.

* "This vote," says Mr. Bethel, "passed the House, without any negative, more than that of the Secretary of State; but the courtiers no sooner knew the sense of *Whitehall* upon it, that, from that time forward, they never appeared in the least for the making good one word of it." *Brief Narrative*, p. 340.

† "That night he was voted Chief Magistrate, with such boundary and qualifications, as shall be sett." *Goddard MS.*

On the subject of these discussions *Whitelock*, now occupied "about the business of the great seal," of which he was again one of the three Commissioners, has only the following short notices.

"Feb. 8. The House of Commons debated the Bill of Recognition of his Highness to be Lord Protector; and some were very cross in that business, which caused doubts of the good issue of this Parliament.

"9. The members returned for Scotland and Ireland, to serve in this Parliament, [see *supra*, p. 75], appeared very full." *Memorials* (1732), p. 676.

"Upon the 7th of February," says Mr. Bethel, "the Bill for recognizing the Pretender, was read the second time, and the debate begun. The court party pleaded the Petition and Advice, as the foundation of

*Tuesday, February* 15, 1658-9.

I came late, and found a great many citizens at the bar, opening their great Petition, by Samuel Moyer.* I suppose most of them were Anabaptists.

his title, but the country-party denied it to be a law; in that the members were never suffered to meet, but so many of them kept out by force, and that even by him that called them, as he judged would hinder the execution of his will. Besides, that, at the creation of the monster, there were, of 460 members chosen, but 104 in the House, whereof 51 were against it, and but 53 for it, among whom were Scotch and Irish members, who had no right to sit, but were usurpers in making laws for England.—

"But the Court, being resolved of no less than a Turkish power, would suffer no reason to prevail with them, to the making the Petition and Advice unauthentic; but as it had force for its original, so it must have the same in the allowance of it for a good law; which provoked the country-party to demand a proof of the pursuance of that law; in the Pretender's election, and that his designation was according to the directions of it.

"But, though this was pressed by persons of great abilities, never any answer was given to it, the Court-party knowing that, by the strength of their members, they could overrule the strength of reason. But, those for the country, taking the others' silence in the point of proving the designation, to be a granting that there was none at all, argued that if the election was void, and that Providence had prevented the usurper Oliver of keeping to the Petition and Advice, in appointing, during his life, his successor, the law was thereby fallen to the ground, and all government reverted to its original, the people, who ought by their representatives assembled in Parliament, to bestow it as they should think fit, which would then have been readily given by most of those then present, to the gentleman in possession, if he and his party would, upon these terms, have accepted of it, as they refused it, lest, by owning the Parliament to be the Creator of the government, they should own a power in them to destroy their own creature when they pleased, which they were not for in Cromwell's case, though some of them had made the same thing the ground of their fighting in another case.

"This debate, no man speaking twice to the matter, held eight whole days successively. In which time, great excellency and good affections appeared in several gentlemen, in their speeches for the good of the nation. Yet the best they could bring this debate unto was to conclude with the two votes (14th Feb. 1658,) as previous to the commitment of the Bill." *Brief Narrative*, pp. 337—339.

* See *supra*, p. 152. "Samuel Moyer" was one of the seven members for London in the Parliament, 1653. "The House being informed that

After Moyer had spoken almost an hour, a great deal of cant language, the petitioners withdrew, and the petition was read.* It was very bulky in respect of the number of hands, principally levelling at the two great stakes, the militia and negative voice; and that no officer be removed, but by a Council of War.

*Sir Arthur Haslerigge, Mr. Neville, Mr. Knightley* and others, moved that the petitioners have thanks. But see the sequel. The table was turned; for they got neither thanks nor good affection. Such honour have all such factious petitioners.

*Serjeant Maynard.* I am against giving thanks to any petitioners. It is not fit for us to bow to them.

*Mr. Starkey.* I move to give thanks; but would not, upon a general complaint, recommend them to the Committee of Grievances. They may have recourse thither, if they have any particular grievances.

*Sir Walter Earle.* I am against giving thanks; but would have them acquainted, that the particulars they petition for, you have now under debate.

*Mr. Reynolds.* I move to leave it to you to word your return. You may express it some other way, than by thanks.

*Mr. Bulkeley.* There are some things in it I cannot give thanks for.

1. It puts all power in a court-martial, without taking you in.†

those gentlemen of good affections to the Commonwealth, who formerly attended to deliver a petition to this House, were without at the door; they were called in, and Mr. Samuel Moyer, in the name of the rest, presented to the House their Petition." *Journals.*

* "Directed to the Parliament of the Commonwealth of England; and was intituled, the humble petition of divers citizens and inhabitants, in and about the City of London." *Ibid.*

† Dr. Barwick, "immediately after the Restoration successively Dean of Durham and St. Paul's," but now earning the royal wages of Church preferment, by his good services as a spy for Charles Stuart, or, in the plausible language of his biographer, by "secretly managing the king's affairs," thus writes to Hyde (Lord Clarendon, see *supra*, p. 110, *note* ||).

"Feb. 16. 1658-9. The Protector already relies upon the great offi-

2. I take notice of the agreement of the people.*

3. A declaration of an army, a Parliament sitting. Where a petition has a clog, with pamphlets———†

It never mentions a single person, not so much as that they desire a single person.

I never had office, nor seek office. I find in it a strong inducement for turning men out of office. This goes a great way. It argues more of self. Those that first engaged, did not seek themselves. They have their reward.

Those things that are fit for your consideration, you will, in due time, take them into consideration. Call them in and say so.

*Sir Henry Vane.* The name of single person you have settled. None will speak against it; but if you mean by that, the thing, I hope it will not be agreed. They desire nothing but what you have voted, and is for common right. It is not of particular grievances they complain, but of the discouragement of those that will act for their interest. If you could find out a way to discourage us, others will vote what the single person pleases. I would have a public spirit, if not a Commonwealth encouraged; and would express your receiving their desires with a great deal of courtesy.

*Mr. Swinfen.* I would have this caution along with your return to the petitioners, that the coming up in the name of boundless liberty may not destroy liberty; that unlimited liberty has been the source of all mischief. If we agree but the thing liberty, we shall not fall out about names. I would have general discourses laid aside. There is as much tyranny in liberty as otherwise. I would not stir up that liberty that leaves you no liberty here.

In regard it is the first petition,‡ your answer ought to

cers of the army, and the republicans on the under-officers, more than upon the votes of either party." See "Thurloe State Papers," vii. 615.

* See *supra*, 113, *note* §, 138. † Blank in the MS.

‡ Dr. Clarges, who was already intriguing, in concert with his brother-in-law Monk, for "the King's return," (see *supra*, p. 153, *note*,) in a letter to "Lord Henry Cromwell, Lord Lieutenant of Ireland," (see *supra*, p. 151,) says:

"Feb. 15. This day a petition was presented by Mr. Berners, Mr. Kiffin, and some others in the name of themselves and 40,000 citizens of

be wary, lest you set petition against petition, and petitioner against petitioner. Only take notice of their soberness in

London, which I am told is the same that was endeavoured the last session of the last Parliament, and caused his Highness to dissolve them." See "Thurloe State Papers," vii. 617.

Mr. Edward Bowles, an eminent Presbyterian minister, thus writes to Secretary Thurloe. "York, Feb. 12, 1658-9. I perceive the parties disaffected to settlement, are adroit in making petitions to the strengthening of their design. If you find that such things take any impression, they may easily be balanced with contrary opinions." *Ibid.* p. 610.

Mr. Bowles, according to Dr. Calamy, "was for some time chaplain to the Earl of Manchester, but, upon the reduction of York, (in 1644) was one of the four ministers maintained by the state in that city, with honourable stipends." Here "the very sequestered, and decimated gentlemen, as Sir Christopher Wyvill, &c., were his hearers, and sometimes at his house, where, in the evenings, he was wont to repeat his sermons." He was, however, not merely a *religious*, but could, on an inviting occasion, readily become a *secular*.

"Though he lay hid, yet was it said, that he was the spring that moved all the wheels in the city. His greatest activity and interest was seen in 1660, when the Lord-general Monk passed through Yorkshire, where most of the gentry of the county, with Lord Fairfax at the head of them, addressed to him for a free Parliament. The address was one main cause of the King's Restauration, and, as to this whole business, it is well known Mr. Bowles had a considerable hand in the management of it." *Account* (1713,) pp. 779—781.

In the *Introduction*, (p. x,) to "A Collection of Letters," (1714) it is said that "Mr. Bowles and other royalists assured the general, they were willing to join with him, but they disapproved of his declaration, filled with many protestations for the asserting of no other than a Commonwealth government."

In Dr. Gumble's Life of Monk, Mr. Bowles is named as one of the two Presbyterian ministers, between whom the general marched into York.

Dr. Price, another of Monk's intriguing chaplains, having related his master's progress from Edinburgh to York, in January 1659-60, thus proceeds:—

"Here we staid five days, one of them being Sunday, and Mr. Bowles gave us a good sermon in the cathedral. This gentleman was the Lord Fairfax's chaplain, counsellor and agitator; and dealt with the general about weighty and dangerous affairs; one night above the rest keeping him up so very late, that upon my entering the chamber to go to prayers, I found him and Bowles in very private discourses, and the General ordered me to go out for a while, but not to bed. Some time after midnight, Bowles went away, so that then our servants hoped to sleep. But

acquiescing in your determinations. For their affections in that, give them thanks.

*Lord Lambert.* If we apply that to the petitioners, that a crying up of liberty is a destroying of liberty, it is a mistake.

The known way to throw out officers, is only by a council of war, and it agrees very well with the liberty of the subject. If there be but one good thing in it, take notice of it,

the General sent for me in to him, and commanded them to stay without as before.

"He took me close to him, and said, 'what do you think? Mr. Bowles has pressed me very hard to stay here and declare for the King: assuring me that I shall have great assistance.' I started at the boldness of the proposition, and asked him whether he had made Bowles any such promise. He answered me 'no truly I have not,' or 'I have not yet.' For I found him a little perplexed in his thoughts." See "The Mystery and Method of his Majesty's Happy Restauration, laid open to Public View. By John Price, D.D. one of the late Duke of Albemarle's chaplains, and privy to all the secret passages and particularities of that glorious Revolution." (1680), p. 79; Maseres's *Tracts* (1815), pp. 751, 752.

The once flourishing patriotism of the Parliamentary Hero, (see *supra*, p. 273,) and his "laurel, meed of mighty conquerors," had now, like the "way of life" of Macbeth, miserably "fallen into the sear." Dr. Skinner (*Life of Monk*, p. 188), says that "Mr. Bowles was directed by Lord Fairfax to confer with the General." This accords with Dr. Price's further relation.

"The noon before this mighty intrigue, the Lord Fairfax dined with the General, privately in his chamber, and the General, to return the Lord Fairfax's kindness, went one day and dined with him, at his country-house, (Nun-Appleton) where he and his retinue were hospitably entertained, and returned the same night." Just at this time the General had publicly cudgelled an officer who had traduced him, by saying, 'this Monk will, at last, bring in Charles Stuart, charging his officers to do the like to those under their command that should so offend." *Mystery*, pp. 80, 81.

"Mr. Bowles accompanied Lord Fairfax to Breda, to invite King Charles into England," and, according to Dr. Calamy, "had not he and his brethren bestirred themselves, Episcopacy had never been restored." He was one of a few Presbyterian royalists who just escaped, in the security of the grave, their worthy reward from the Crown and the Prelacy; dying in August, 1662, his age not exceeding forty-nine. He was buried on the eve of Bartholomew-day." *Account*, pp. 781, 782.

and say that you will take it into consideration, and acquaint them, that they may go home to their houses and mind their callings.

*Mr. Trevor.* I am glad those votes please the gentlemen so well, that were not so pleased with them before. I would give such an answer as may neither flatter nor discourage. I would have a grave answer. Let them know you have read the petition, and those things that concern the liberties of the people, you will have under consideration in due time.

*Mr. Scot.* I move that we may not amuse the House by discountenancing the petitioners. You may safely own the good things in the petition.

*Sir George Booth.* I have been as much for the rights and liberties of the people as any man. I doubt there is not such peaceable intentions in this petition. He that would plunge my country into blood, I must fly in his face.* A

* Yet this speaker, one of the Presbyterian royalists, secluded from the Long Parliament, was prepared, in a very few months, to "plunge his country into blood," in the worthy cause of Charles Stuart, by heading an insurrection in Cheshire and Lancashire, for which latter county he was member in this Parliament.

"August 6, 1659," according to *Ludlow*, an army under Lambert marched from London, and defeated at Warrington "Sir George Booth and his party, who were about four thousand in number," their general attempting to escape in disguise, like his master, Charles Stuart, after the battle of Worcester, though without the royal success.

"Sir George Booth, after his defeat, put himself into a woman's habit, and, with two servants, hoped to escape to London, riding behind one of them. The single horseman going before, went to an inn on the road, and, as he had been ordered, bespoke a supper for his mistress, who, he said, was coming thither. The pretended mistress being arrived, either by alighting from the horse, or some other action raised a suspicion in the master of the house, that there was some mystery under that dress. And thereupon resolving to make a full inquiry into the matter, he got together some of his neighbours to assist him, and with them entered the room where the pretended lady was. But Sir George Booth, suspecting their intentions, and being unwilling to put them to the trouble of a farther search discovered himself. Whereupon they took him into their custody, and sent him up to London, where the Parliament committed him prisoner to the Tower." *Memoirs*, ii. 684, 695.

"A Committee was sent to examine Sir George Booth in the Tower,

gentleman heard one of them say great things to this purpose. It is Colonel Grosvenor. This intimates that it comes with no such peaceable intentions as it seems to hold forth.

touching the design wherein he had been engaged, and the persons that had promised to join with him. He confessed to have received a commission from the King, and that many of the nobility and gentry had promised to appear with him, whereof he discovered some, and desired more time to recollect himself concerning others." *Ibid*, p. 696.

The speedy suppression of this insurrection appears to have shed a lustre on the last days of the expiring Commonwealth.

"Upon the news of our success against Sir George Booth," says *Ludlow*, "Colonel Lockhart, [see vol. i. p. 107,] our ambassador at the Pyrenean treaty, began to be courted by the Spaniard, as he had been before, by the French; and our plenipotentiaries met with good success, in their mediation for an agreement, between the two northern crowns; and the Dutch not daring to attempt what they had designed for the King of Denmark, the two Kings were in a fair way to a peace, though the King of Sweden had expressed his discontent, that the two Commonwealths should form conditions, to be imposed on crowned heads. But being told by Colonel Algernon Sydney that the friendship of England was not to be obtained on any other terms he seemed to acquiesce." *Ibid.* pp. 697, 698.

Previous to the defeated insurrection of Booth there had been a "Treaty between the Parliament of England and the United Provinces of the Netherlands, for inducing Sweden and Denmark to make a peace. Done at the Hague, July 24, 1659." See "A General Collection of Treaties," (1732), iii. 197.

Lord Clarendon "casts discreetly into shade," the neglect which Charles Stuart experienced from the rival diplomatists, on his fruitless journey to the Pyrenees, in 1659, though he admits that "the best the King could now look for seemed to be a permission to remain in Flanders with a narrow assignation for his bread." He says, that Cardinal Mazarine "knew well that Spain did at that instant use all the underhand means they could to make a peace with the Parliament. Therefore he renewed all the promises he had formerly made to Oliver, again to Lockhart, that 'he would never make a peace without the consent and inclusion of England;' and very earnestly desired him, and writ to that purpose to the Parliament, that he might be at the treaty with him, that so they might still consult what would be best for their joint interest." *History* (1712), iii. 677, 690.

Monk, having restored "the secluded members," or Presbyterian royalists, while solemnly declaring "that he would oppose Charles Stuart to the utmost," they "gave order," says *Ludlow*, "to discharge Sir. George Booth from his imprisonment, if he would engage to make his

I was sent for, to speak with S. A., so could not attend the debate.

It seems Colonel Grovenor said, he heard one Colonel White say, that rather than part with a Commonwealth, he would wade to the neck in English blood. He said it in the lobby, but knows not whether he was a petitioner or no.

It should seem, it was moved to give the petitioners thanks, and put to the question that these words, "and doth take notice of their good affections," shall stand, and be part of the answer.

It was carried in the negative almost by one hundred votes;* and the petitioners were dismissed with this only; that the House would, in due time, take into consideration such parts of the petition as were fit for them to consider of.†

appearance upon summons; which he, thinking to be injurious to him, who had attempted to do no more than they themselves were attempting, refused the condition, but was soon after released without entering into any obligation." *Memoirs*, ii. 856, 857.

Sir George Booth, who died in 1684, was created Lord Delamere, by the restored Stuart, so appropriately connected were the work, and the wages. His son, Henry Lord Delamere, who distinguished himself among the promoters of the Revolution, was sent with the Marquis of Halifax and the Earl of Shrewsbury, by "the hero William," to his royal father-in-law, to order that King to remove from Whitehall, "a message," says Lord Orford, "which he delivered with a generous decency." The dethroned prince afterwards said, "that Lord Delamere, whom he had used ill, had then treated him with much more regard than the other two lords to whom he had been kind."

This second Lord Delamere, whom King William "dismissed from office, to gratify the Tories," and created Earl of Warrington, and who died in 1693, aged forty-one, was described by a contemporary versifyer as

"Fit to assist to pull a tyrant down;
But not to please a prince that mounts the throne."

* "The House was divided. The *Yeas* went forth.

"*Yeas* 110. Sir Thomas Style and Major-general Packer, Tellers.

"*Noes* 202. Mr. Annesley and Mr. James Herbert, Tellers. *Journals*.

† "Resolved, that the answer to be given to the petitioners shall be,

The petitioners, I believe, were scarce well satisfied.

The House rose at one.*

The Committee of Privileges sat in the House till nine at night, upon the business of Malton.† They did not determine it; but it is clear for Mr. Howard against Robinson.

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*Wednesday, February* 16, 1658-9.

I came late into the House and found them engaged upon a great debate, touching an accusation of a member, Mr. Neville, for atheism and blasphemy.

*Mr. Bulkeley* was speaking, and it seems he first stirred it, having been put on by three ministers, who, it seems, heard Mr. Neville speak words to the same purpose; but there was no information in writing.

Divers members had spoken *pro* and *con*.

*Sir Arthur Haslerigge.* You ought to be very tender of a member. The charge ought to be certain as to time and place; else it is in vain to produce witnesses to clear a man. He knows not what to plead to.

*Mr. Attorney-general.* This gentleman has had ill fortune. Not long since, he was accused here of another crime. I would have a time appointed when, for your own honour,

that the House hath read their petition: that some of the particulars mentioned in their petition the House hath already taken into consideration: and that such others as are fit for the consideration of this House they will, in due time, consider of them: and do expect that the petitioners should acquiesce therein, according to their own expressions.

"The petitioners were again called in, and Mr. Speaker gave them the answer of the House to their petition accordingly." *Ibid.*

* "Ordered, that the House do proceed, to take into consideration, such additional clauses, to be part of the Bill intituled an Act of Recognition, &c., as are mentioned in the vote passed yesterday, the first business to-morrow morning, and that nothing else do then interfere." *Ibid.*

† "The question was whether New Malton alone, or Old Malton and New Malton, together ought to elect burgesses." *Parl. Hist.* xxi. 259.

and the honour of the gentleman, you will hear this business at the bar; and let the charge be brought in certain, as to the circumstances of time and place, in the nature of an indictment; that the gentleman may know how to make a certain defence.

*Colonel Bennet.* It is reasonable that an accusation should be certain. The world pass by the circumstances in cases of this nature, and only take a charge subscribed by some person. Godly opposites are apt to consider one another as monsters, and heretics. Let us all live by a law, whatever a man be. He has but an accusation upon him unproved. For a member to be guilty of atheism and blasphemy, you cannot in honour let it go. Let the accusers post down their names, and as to time and place in positive terms; not ambiguous and doubtful, but certain, and appoint a day of hearing. In the meantime, we ought to look upon the person as innocent.

*Major-general Kelsey.* Consider how to vindicate your own justice. The charge is high, but it becomes you that the charge be certain, and the persons accusing, to affix time and place; and not to appoint a Committee, but to hear it at the bar, and have witnesses on both sides heard.

The gentleman will lie under doubtful thoughts by his friends. I would give him a copy of the charge, and time to answer it.

*Mr. Ashe.* I had not troubled you now, but that I can assure you I was this gentleman's protemporary beyond sea, and no man could better defend the Protestant religion and the Parliament's cause.

*Mr. Onslow.* I would have your members have as much benefit of the law as another. This is not ripe for your judgment. I am sorry it puts out the orders of the day. The charge ought to have been certain. You ought first to have a charge before you that may circumstantiate time and place. Here is no formal accusation, nor signed. The accusation may slide off.

Appoint a day, that if any will inform, they may come in, and when you are possessed of a formal charge signed by the

accuser, let the gentleman have a copy, and a day assigned him to answer in.

*Mr. Gewen.* I would not have you stand upon those punctilios of the law as to form. I would have you appoint a day to hear it at the bar, upon the charge you have before you.

*Mr. Scot.* I would have the gentleman that brought in the charge, put it into such a form as he will now abide by. If every thing spoken in discourse be taken from persons, it is hard. What can you have more than a clear renunciation, and an acknowledgment of faith.

The Instrument of Government said, if a man held faith in Jesus Christ;* and he that denied Jesus Christ to be the son of God,† was within protection by that act.‡

I would have a day assigned to bring in a certain charge, as was before moved.

*Mr. Raleigh.* The gentleman was acquitted of the former charge, and the reflection tended to his vindication. I would have a short day appointed for hearing at your bar.

*Serjeant Maynard.* It is gone too far to put it off your hands, both for your own and the gentleman's honour. Appoint a time to hear it at the bar, and the gentleman that will accuse, to be there.

*Mr. Speaker.* I must acquaint the House, that no paper is in at all, nor is the gentleman that charged him here, at this time.

*Sir Henry Vane.* No member of the House ought to take notice of the charge, till it come in writing, subscribed by the accuser. The charge comes not certainly in. It neither comprehends certainty of time, place, fact, or person. When they could accuse our Saviour of nothing else, they brought in blasphemy.§ Till this certainty be made out, he ought not to answer.

*Mr. Lechmere.* It is impossible for any man to make an-

* Faith in God by Jesus Christ." See vol. i. p. 50, *note.*

† Probably meaning in the Trinitarian sense.

‡ "Though differing in judgment," &c.

§ *Mat.* xxvi. 65; *Mark* xvi. 64.

swer to a charge of this nature; neither time, place, nor person certain. It is your honour that your door is open to formal and regular charges. I would have you lay it aside, till it come in formally.

*Major Beake.* You have made two precedents.* There was nothing in those two cases but the information of two members. Records were said to be against them, but none were produced. I have observed a great deal of tenderness to this person in all the debate. Have equal respect to all your members.

Order the gentleman that brought in the accusation, at a certain day to bring in a charge; and then order a day to hear both sides. You cannot pass off a matter of this nature without a strict inquiry.

*Mr. Steward.* I am not to have it laid aside. It is either a great crime or a great calumny. Appoint a time to bring in a formal charge of the crime, and if it come not in that day, then call it a calumny. When the charge is certain, then appoint a day of hearing.

*Mr. Manley.* I cannot down with that doctrine that punctilios should be waved. General terms in an accusation will not carry. I shall offer that worthy case of Susanna,† who was acquitted by assigning certainty of time and place. To be accused of words after so long, they had need to be certainly assigned.

I would have you wave it for the present, and go to your other business.

*Mr. Speaker.* I observe by your debate that the charge is imperfect, for want of time and place and persons to own it. I observe you are not willing to wave it nor let it sleep.

*Mr. Bulkeley.* I am sorry to see this charge compared to Susanna and the monsters of the elders. You will never have a charge of this nature, if you tie persons to sign the charge, and if they prove not all things punctually, then to be left to be undone. They may fail in circumstances, and yet prove the substance.

* See *supra*, pp. 241, 249. † "History of Susanna." *Apocrypha.*

As I would not have you encourage trivial complaints, so I would not have matters of this nature discouraged. Encourage those that aim at God's glory in their complaints, and distinguish such from malicious and light accusations. I cannot assign a time.

It is said, Why not an indictment at law? I would be tender of life;* but to be capable of sitting in the House, I would not have it passed by. Manifest your prudence at this time. I would have as much charity as any man, if I could hear the gentleman say he did it in heat of discourse.

I would have you appoint a day of hearing, and if the gentlemen cannot make it appear, then let them be severely punished.

*Sir Anthony Ashley Cooper.* A matter of this nature ought to be made clearly out. To make a man an offender for a word, is hard. Manifest and open offences may be punished with more severity. I would have the charge clear, that the defence may also be clear and certain.

*Mr. St. Nicholas.* In a business of this nature, it must be proved *malitiose.* I would have the business laid aside.

*Mr. Attorney-general.* I would neither have discouragement nor invitation to charge men. Let them appear, and their charge shall be heard. Leave it indifferent.

*Colonel Terrill.* Neither time, place, nor person, is certain. I would then put it, whether you have by this charge ground to proceed upon.

*Sir Arthur Haslerigge.* Here is a high breach of privilege, the highest that ever was but that of the King.† A charge against a member and no hand to it. I would have this considered when you come to speak of your privilege. Therefore I would have no notice taken of it at present; but to vindicate your honour and that of the gentleman, appoint a day when you will be ready to hear any charge against this gentleman. It is a huge breach of your privilege to take

* See the Act, 1648, *supra*, p. 208, *note.*

† Probably referring to the outrage described *supra*, p. 92, *note* ‡.

notice of this in your book, that further charges shall come in, and yet no charge made.

*Mr. Bulkeley.* I am ready to make good the charge; so have not broken your privilege, which I shall defend as much as any man.

*Mr. Swinfen.* If I were now just come into the House, I should not know whether you were proceeding against the person accused or accusing. You seem to lay all upon the accusers, without hearing them. In the accusations against two members, no circumstance of time or place was assigned. You have cast out two members* and committed an accusation against another,† without any circumstance at all, only upon general terms.

*Mr. Reynolds.* Those members were accused of matters-of-fact that were upon record. Every man may read it. These are but words. Those gentlemen confessed the facts. That against the other gentleman was by way of petition of some eminent person. Those cases differ clearly.

Since it is undertaken to be made good, let us have a charge circumstantiated as to time, place, &c., and if he be found guilty, I will go as high in punishing him as any man.

*Mr. Bulkeley.* I know the persons that informed me of this so well, that I durst venture to make it good; not that I desire to add fuel to fire, but rather to pass it by, seeing the gentleman seems to disclaim it. I shall acquiesce or proceed, as you please. I know nothing of it myself, but believe it as much as I do any thing that I did not see.

*Mr. Onslow.* Appoint a day that you will be ready to hear it.

*Mr. Neville.* I would not have it left *sine die*, but that you would examine it. If this gentleman accuse me, there needs no more. If not, appoint me an accuser, and a day to answer.

*Mr. Speaker* moved if any person should be named to prosecute.

*Sir John Lenthall.* I am as great a stranger to the gen-

* See *supra*, pp. 241, 249. † "Mr. Streete." See *supra*, p 255.

tleman as to any that I have long known by sight. If you pass by this, I doubt it is not for your honour. It is fit every person should know his accuser; and that all punctilios and circumstances should be as well observed in this House, as in Westminster Hall.

If you cast dirt somewhat will stick. This is as much as ever was laid upon any member. It is likely he might argue in the third person, as I have often done. Let your doors be open to all complaints, but let things of this nature come in formally; so that if the accuser fail, either this House may give us satisfaction, or else we may have it in Westminster Hall, against such clamours.

*Mr. Bulkeley.* I am sorry I should be accounted clamorous. I took myself to be a member. I have not so much elocution as that gentleman, but speak in plainness.

*Sir William Wheeler.* I am sorry to see time spent about words. Clamour is a good word.*

The House must be possessed of something, but you are possessed of nothing. There must either be a charge, *viva voce*, in the House, or in writing from without doors. The gentleman can say nothing. You ought to make no order at all in this case, because not possessed of it.

*Colonel Allured.* This is a high breach of privilege, to accuse an honourable member. Westminster Hall would not receive such a charge. I suspect it, because the gentleman said he kept it in his pocket a fortnight. It may be out of design to dishonour his great business to-morrow. There is no certainty.

*Mr. Hobart.* I would neither have an accuser deterred nor encouraged; but it is not before you. I would have a day appointed to bring in a charge; else account it a calumny.

*Colonel Birch.* I am of opinion that this is not before you. I would have it laid aside till it come in formally;

* "He cited a case, in 44, against a member. The case was heard at bar, and the party acquitted." MS.

and go to the business of the report from your treasury. I am glad the word charged can admit of so candid an interpretation. I always understood it in the worst sense. I shall now take it in the best sense.

*Lord Lambert.* I could pass by an atheist, a drunkard, &c., in Westminster Hall, or any other place, but not sit with him here. I would have nothing done or said in this House that may exclude just complaints against any member, be they brothers, or never so near. I have not much known the gentleman, but have heard well of him. Strong conclusions have been drawn from disputes, even by pious men, as the minister told you. I have known a charge brought in, and no particular time nor place. I shall not mention it. It wanted both circumstances. I would have you lay aside the debate till the charge come formally before you.

*Mr. Bodurda.* I would have it ordered that a week's time be allowed to bring in a formal charge against this gentleman; and that the gentleman that informs you, give notice to the gentleman that informed him, to be here.

*Mr. Bulkeley.* I should rejoice to ask the gentleman forgiveness; but I doubt it will be too clearly proved. I wish it may not.

*Mr. Solicitor-general.* I would have no day appointed, and no further time spent in the debate. If any have a mind to prosecute, they may. Your doors are open.

*Sir Arthur Haslerigge.* For your honour, I would not have you spend four or five hours' time in it, then put it off, and leave it *sine die.*

*Sir Henry Vane* moved the like.

*Serjeant Maynard.* Against what I moved in the morning, I am convinced that it is not before you to pass any question.

*Colonel White.* I would have no question, but lay it aside.

*Colonel Kenrick.* Now that you have received it, I would, for vindicating the gentleman's honour, have a day appointed to bring in an inquiry.

*Mr. Jenkinson.* You cannot put any question without reflections on one side or the other. Your doors are, and ought to be, open to all complaints.

*Mr. Disbrowe.* I would have had all reflections spared. It tends to grieve the spirits of one another. I would have no question put, lest it be understood that you shut your doors against complaint. I would have the question, if the question shall now be put.

*Captain Baynes.* I would have no question at all put. The gentleman that gave the information is bound, in order to vindicate himself, to bring in a charge. I would not have you invite accusations.

A general inquiry has been over all the county against this gentleman, of all that ever he has done, or has been, since he was chosen for the last Parliament.

I would have no question remain on your books.

*Mr. Onslow.* Consider the consequences, to lay aside the debate. A member singly accuses a member of atheism and blasphemy, and he denies it. You pass it by. Either he shall go away as a guilty person, or else you shall be strangely thought on without doors.

*Mr. Scot.* I move to have no question at all put.

*Sir Thomas Barnardiston.* Seeing it is insisted on, put the question, if the question shall be put.

*Lord Lambert.* I should be loth that this should be carried in the negative. If in the affirmative, it will be a kind of proclamation to all to come in and accuse your members; an invitation to all inquirers.

*Mr. Reynolds.* There are five hundred members, and every member might have such a charge against him. They would take up every one a day, and then the Dutch might indeed give you 2000*l.* a day, as it was moved before.* I would have you go to the orders of the day. This gentleman's business† is to come in to-morrow. I would not have that to be shut out by any other business.

* See *supra*, pp. 117, 128, 164. † See *supra*, pp. 52, 192.

*Colonel Matthews.* I move that the gentleman's business be taken up to-morrow.

*Sir Henry Vane.* This business came unfortunately upon you, to hinder the orders of the day for money. I would have Mr. Neville's business, that should have been heard to-morrow, give way to the business of the Accounts, and appoint another day for Mr. Neville's other business.

It was ordered to be heard on Saturday next, between him and the late Sheriff of Berkshire.*

As to the charge against Mr. Neville,† it fell asleep after five hours' debate, nobody knows how. Mr. Neville was present all the time.

It was moved, that the Accounts from the Commissioners of the Army and Navy, &c., be brought in in the morning, and it was ordered accordingly.‡

The order of the day was read in relation to the great debate adjourned. Ordered to be resumed to-morrow morning.§

The House rose at past one.

There was nothing more done this day, but Captain Whalley made his election for Nottingham, and prayed a new writ

* "Mr. Strowde," and "that counsel on both sides be heard at the bar." *Journals.*

† There appears to have been a similar charge against another member, of which there is no report. Thus Barwick to Hyde:

"Feb. 16. This day Young of Shropshire, a Protectorist, and Neville of Berkshire, a prime republican, have been accused of atheism." See "Thurloe State Papers," vii. 616.

‡ "That the accompts, concerning the public treasure, left in the hands of Mr. Sherwyn, one of the members of this House, by the Commissioners of the Treasury, be delivered into the House by him to-morrow morning, at the first coming of the Speaker to the chair.

"And that the establishment of the army, from the committee of the army, and the accompt of the present charge and debt, owing to the Navy from the Commissioners of the Admiralty and Navy, be then also delivered into the House, by the members of this House, who are employed in those services, and in whose hands respectively the said establishment and accompt do remain." *Ibid.*

§ "At nine of the clock. That this House do take into consideration the additional clauses to be part of the Bill, intituled, an Act of Recognition, &c." *Ibid.*

for Shoreham, he being chosen for both places; which was ordered accordingly.

The Committee of Grievances sat, Colonel Terrill in the chair, on the petition of Rodney and Cole,* and a petition from Major Portman, who is a prisoner in the Tower.†

* See vol. i. p. 300. ii. 130, 131.

† "To the Right Honourable, the Representatives of the People of England assembled in Parliament.

"The humble petition of Elizabeth Portman, the afflicted wife of John Portman, late principal Secretary to the Generals at Sea, now close prisoner in the Tower of London,

"Humbly sheweth, that your petitioner's husband hath been always of true and sincere affections to the public cause of God in this nation, and personally engaged in that cause to the utmost of his power. That, notwithstanding the premises, he was, about a year since, violently, and by armed force, taken from his house, by virtue of a warrant from the Lieutenant of the Tower, and committed to the Tower of London; and hath been there, ever since, strictly confined, without any notice of the reason of his commitment, and without bringing him to a legal trial, though the same hath been earnestly endeavoured and desired, by the application of several of his friends to those who were in power.

"Your petitioner, therefore, doth most humbly pray, that your honours will be pleased to take the premises into your tender consideration, and to take such effectual order herein, as to your wisdoms, upon examining the true merits of the cause, shall seem meet; that so, your petitioner and her suffering family be not unjustly pressed down, and overwhelmed by this affliction." See "Thurloe State Papers," vii. 619.

"Tower of London, January 1, 1658-9. One Mr. Portman, a prisoner in the Tower, who was, with other fifth-monarchy men, committed by his late Highness, for endeavouring to asperse, withstand, and subvert the governors and government of this Commonwealth, and for having been at work, and seeking by all means to alienate and exasperate the hearts and spirits of persons, so as to disturb the public peace, raise seditions and commotions in the Commonwealth, that, if it were possible, they might bring the nation again into blood.

"This Mr. Portman yesterday, in the evening, made his escape hence, but being suddenly missed and closely followed, was immediately apprehended at one Mr. Oram's house, in Water Lane, near the Custom House, London, and brought back again hither. Yet he had often, and the very night before, declared both to his keeper and others, that if the Tower gates were set open, he would not go forth till he had received satisfaction for his imprisonment." *Mercurius Politicus*, No. 548.

Ordered, that the Lieutenant of the Tower do bring the prisoner, with the cause of his imprisonment.

There was no other Committee sat this day.

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*Thursday, February* 17, 1658-9.

*Mr. Speaker* took the chair at nine.

Mr. Cooper prayed.

The order of the day was read that the Accounts from the Commissioners of the Treasury, Army, Navy, and Admiralty, be brought in.

*Mr. Sherwyn*, according to the order of the House, did present an account from the Commissioners of the Treasury, which was received.

*Colonel Bennet* likewise presented an account from the Commissioners of the Army, according to former orders, which was received.

*Colonel Clark* likewise brought in an account from the Commissioners of the Admiralty, which was received.

*Mr. Speaker* acquainted the House that he had received a letter from his Highness, directed to the House of Commons. He supposed it concerned this business.

*Sir Arthur Haslerigge.* I move, that this being the first letter from his Highness, it stay till the House be full. I farther move to know if the establishment of the Army be brought in, and a list of the officers, that we may know who are our protectors. It seems this is not done. It is not within these gentlemen's survey, but the Muster-Master General's. Dr. Stene* is Commissary of those Musters.

*Mr. Scot* seconded the motion, and said, they were our army. Divers officers were dead, and their accounts left unexamined.

He moved that a particular Committee ought not to be named, but a private Committee was more proper.

*Colonel Birch.* The letter may give us a great deal of

* William Stene, M.D. member in this Parliament for Thetford.

light. Read that first, and then read the accounts, before you commit them.

The letter was read, signed R. P., directed to "Our House of Commons."

*Sir William Wheeler* was moving something in relation to the business of the accounts.

*Sir Arthur Haslerigge* took him down, and said, though he looked over the letter, and said nothing to it, he had to say something to it, though with weakness.

*Sir William Wheeler* took him down, and said: for aught Sir Arthur knew, he might have spoken to the letter, but said not a word to it.

*Sir Arthur Haslerigge* took notice of it, and said: it ought not to be slightly passed by.

We are come again, for aught I know, to King, Lords, and Commons, when Kings and Lords were in their height. Let us be exceeding careful of an ill precedent.

I heard it said yesterday, that an officer said in the head of his regiment, that his Highness and the other House were desirous that the army might have their pay, but the Commons were against it. I wish our young Prince may have good and wise counsel about him, not to advise him to a breach of the privilege of Parliament. I doubt this is laid at our doors. Have we not hastened this?

Was there need of this letter? The Lord deliver us from such evil counsellors as King Charles had about him, in the beginning of the Long Parliament. One ran to court, the other went with the vote, as soon as ever it passed.* We have looked upon this as a high thing for a member of this House to go to dinner at court; but we are all in now, say they. A word is enough to the wise. For an innocent Prince to be misled, I am heartily sorry for it. There was no need of this letter. I pray God deliver him and us from evil counsellors.

*Mr. Secretary.* This letter was well intended, and not to direct you. If any evil counsellers be, let them be known.

* See *supra*, p. 206.

I am, for my part, here ready to answer any charge. It is an easy thing to charge in general terms. I was never a soldier, but shall have the courage to withstand any charge. His Highness thought fit to give you this account, and lay it fairly by you, that you should use your prudence in it. There was no breach of privilege intended, nor I hope any done. It is fit you should understand the emergencies of your affairs.

*Sir Walter Earle.* I observe no great pressing nor requiring in the letter, only it seems to take notice of your debates, which ought not to be done. One Tirrell was highly censured by this House for carrying things out of doors. But it is no more than has ever been done, to acquaint the House of Commons. It is no new thing, but was always represented this way.

*Mr. Knightley.* In the beginning of the Long Parliament, the King did a high breach of privilege upon this House.* What is past, the single person or any other may take notice of; but of the debates he ought not. Mr. Kirton brought a message from court of this nature, but had a warning given him never to do the like again. I wish this had not come, and desire it may not be again.

The letter was all this while passing from member to member.

*Colonel White.* It is not happy for a Commonwealth to have daily breaches upon their privileges; but I find not by this letter, that you are broke in upon. The letter takes no notice of your debates. It is but his duty, he being Chief Magistrate, to advertise you of your charge and preparation. I would have the letter laid aside, and Mr. Secretary to take notice of it; that nothing may hereafter come from the court of this nature, to distaste the House.

*Sir John Northcote.* This was no breach of privilege, to bring in this letter from the Chief Magistrate. He ought to acquaint you of the danger; but I cannot but take notice of what was said by the said officer in the head of his regiment.†

* See *supra*, p. 300. † See *supra*, p. 308.

This may be of dangerous consequence to loose the Army. Those that have no money would pay, but those that have the purse stop it and will not. King's servants have been turned out of the House and sent to the Tower, for telling things out of the House. I would have gentlemen that know not this, haply to take notice of it. If the dangers are real, why not a Parliament called sooner? Why, methinks, our dangers are not so great.

*Mr. Reynolds.* I will not say the letter is a breach of Parliament. It is fair enough, but I would have no more of them.

*Mr. Solicitor-general.* If sending a letter by the Chief Magistrate be a breach of privilege, it were well it were known. I have read over the letter, and find no such things in it. It is fit the physician should know the state of your body; but to desire no such letter should come again, is to stop the intercourse between you and your Chief Magistrate.

*Mr. Onslow.* Put the letter wholly aside, and make no further debate of it. It mentions no money. It is no breach of Parliament. I move that the Muster Roll be brought in.

The letter was laid aside, and the debate upon the establishment of the Army was proceeded upon.

*Sir Arthur Haslerigge.* Now you are fully possessed of the business, and ripe to appoint a Committee.

*Mr. Bodurda.* I am against a Committee. You may, by the accounts before you, understand the heads of what is fit.

*Colonel Allured.* I move that none that are concerned in the accounts, be of that Committee.

*Major Burton.* I move that Captain Baynes be added to the Committee.

*Mr. Bodurda.* I move that Sir John Carter be of the Committee.

The question was put, yet Sir Arthur Haslerigge took exceptions, and the question was again put a first and second time.

*Mr. Knightley.* I move that that question be put again.

*Sir John Carter.* I am no accountant, nor have meddled

with money, nor am in any way concerned. As a soldier, I have fought and bled for you. If I be a fit member of the House, I suppose I am a fit member of a Committee.

*Sir Arthur Haslerigge.* I found myself unfit for accounts, and did not know that that gentleman was fit for them; so I gave my negative. I ask his pardon for it, and am sorry that he should take exceptions.

*Mr. Sherwyn.* If Captain Baynes have a salary, he may not be of the Committee.

The question being put upon Mr. Scot,

*Mr. Speaker* declared for the *Yeas.* Some declared for the *Noes*, but the House was not divided; yet Mr. Scot stood.

*Captain Baynes.* By the favour of the Parliament, I am one of the commissioners appointed to receive appeals touching the excise, and do receive a salary for it. I shall be laid aside, if you please.

*Mr. Bulkeley.* I move that you abide by your order, and not let any persons that receive or pay salaries be of this Committee.

Captain Baynes was thereupon excused.

*Mr. Secretary.* I move that Mr. Knightley be one.

He prayed to be excused, for ignorance, and that Alderman Thompson be named in his stead.

*Colonel White* moved that Captain Baynes be one, for he was very fit, and not disabled by receiving a salary.

*Lord Lambert.* I would have Captain Baynes left out, and Colonel White in his stead.

*Captain Hatsell* prayed to be excused, and it was ordered accordingly.

*Mr. Trevor* moved that Mr. Knightley be added.

Resolved, that there shall be but twelve of this Committee, viz.

Mr. Middleton, Colonel Birch, Sir John Carter, Sir Henry Vane, Major-general Brown,* Lord Lambert, Mr. Godfrey, Colonel Thompson, Mr. Scot, and Mr. Jackson.

* Alderman, and one of the members for the City of London. He is mentioned by Lord Clarendon as commanding the garrison of Abingdon for the Parliament, in 1644. *History*, (1712,) ii. 526.

Resolved, that five be the quorum of this Committee.

*Mr. Godfrey.* I move that a chairman be named here, that may have the particular care of this business. I move for Colonel Birch.

*Mr. Attorney-general.* The Parliament used to name a chairman; but they found that inconvenient, in respect, the chairman being away, hindered all the business.

The titles of the papers brought in were read, and referred to the said Committee, and also referred to them, to take an account of the Armies in Scotland and Ireland.

*Mr. Reynolds.* I move that, by name, the Muster Master be ordered to bring in the Muster Rolls to your Committee.

*Colonel Birch.* I move to give your Committee general power, and then they need not come to you for particular powers; only to inspect your forces by sea and land, and to inquire of the revenue of the three nations, and how your charge may be defrayed for the future, and to send for persons, papers, and records.

Resolved, that these papers and accounts, delivered in from the Commissioners of the Revenue, the Committee of the Army, and the Commissioners of the Admiralty and Navy be referred to this Committee; and this Committee, or any five of them are to consider of the number and strength of the armies and forces by land, and the number and strength

"I thought it strange," says *Oldmixon*, "that the Earl always gave 'Major General Brown,' though in the Parliament service, a good word, 'a Citizen of London, (not a *woodmonger*) 'of good reputation, a stout man.' But I found out the reason of it, when, after the Restoration, he sat on the bench, to judge some of his brother officers to be hanged, drawn, and quartered." See "Clarendon and Whitlock Compared," (1727), p. 165.

This is not quite correct. Alderman Brown, who, in 1660, was Lord Mayor elect, appeared, not "on the bench," but as a witness against his present associate Mr. Scot, nearly to the same purport as Sir Theophilus Biddulph, (*supra*, p. 110, *note*.) He had been one of the Long Parliament, and now described himself as "one of those secluded members that were returned again a little before the coming in of his Majesty." See "Tryals of the Regicides," (1739,) p. 74. Alderman Brown, for this good service, was worthily created a Baronet, to grace his mayoralty.

of the navy forces by sea, and how all the said forces by land and sea are at present disposed of. And this Committee are to meet to-morrow at two, and so *de die in diem*, in the Treasury Chamber.*

*Captain Baynes.* It is enough to deliver in a list of the commanding officers, and the number of the soldiers under their respective commands; and, further, that your Committee inquire how to retrench the charge of bringing in your money.

*Mr. Bayles.* I move to inquire of the miscarriage upon the charge of the money.

*Mr. Reynolds.* I move that the monies laid out to your civil officers, as well as military, be inquired into.

*Colonel Birch.* You intend not to give the disposal of your forces to your Committee.

It was altered to, inquire how disposed of.

*Mr. Reynolds.* I move to have the words added "for retrenching your charge."

These words were ordered to be added accordingly.†

*Mr. Scot.* It is fit you should know the state of your affairs with your allies and enemies. There is a time of year when kings go out to war. Therefore, whether you are in a good consistency and right understanding between you and the Chief Magistrate, or not, your meaning, I suppose, is not to leave the making of peace or war in the single person's hands.‡

* See *Journals.*

† "How to retrench and lessen the charge of the Commonwealth, either in bringing in or issuing out the revenues thereof." *Ibid.*

‡ The sole right of peace and war is now considered as the unquestioned prerogative of the crown; though, as to the latter, the executive can only threaten, should the Parliament refuse the necessary supplies. Such a refusal, from the influence of the crown over the other branches of the legislature, is scarcely to be expected while the system of *soi-disant* representation (see *supra*, p. 149, *note*) shall continue to "work well."

This royal prerogative was disputed, at the close of King William's reign, by that able political writer, Charles Davenant, in "An Essay upon the right of making War, Peace, and Alliances," in which he appeals, by numerous references, to "those authors who are accounted the fathers of our law." He thus describes the result of his inquiry:—

You mean to place it elsewhere. It is, therefore, fit to inquire who are your friends and enemies. I would have a short day appointed to inquire of all this.

*Mr. Onslow.* This Committee will satisfy you in all these particulars.

*Colonel Birch.* I move that all persons under pay attend your Committee to assist them. I have known a chairman in such cases spend 40*l.* from his own purse, in sending for declarations, ordinances, and papers, for the service of the Committee.

*Mr. Neville.* I would have you take into speedy consideration the war with Spain.* There are many reports that the enemy would seek you in peace, if your sense were understood that you would admit it.

There is a general decay of trade, that money will not be had for this business. No money has come for two or three years. I could tell you of one thousand particular decays of trade, by want of the Spanish trade.

I hope, upon the debate of the militia, this business will come into consideration.

*Mr. Secretary.* I move to revive a motion I made in the morning, for which these gentlemen have moved. For the

"I cannot find when, or how, this doctrine crept in, that the right of making war and peace is, indefinitely, without any sort of distinction or restriction, vested in the kings of England; but certainly they who advance it, have neither read our histories nor consulted our records. He who makes this search will find them either silent in the point, or laying down maxims quite of another nature." See "Essays upon the Balance of Power," &c. (1701), pp. 129, 237. For some animadversions on these *Essays*, see *Biog. Brit.* (1789), iv. 650.

* See vol. i. p. 40, *note*. "Cromwell," says Mr. Bethell, "began his usurpation, upon the greatest advantages imaginable, having it in his power to have made peace and profitable leagues, in what manner he had pleased, with all our neighbours, every one courting us then, and being ambitious of the friendship of England. But he neglected all our golden opportunities, and, contrary to our interest, made an unjust war with Spain and an impolitic league with France, bringing the first, thereby, under, and making the latter too great for Christendom; and by that means broke the balance betwixt the two crowns of Spain and France, which his predecessors, the Long Parliament, had always wisely preserved." *World's Mistake*, pp. 32, 33.

state of your affairs in general, you are at peace with all the world; but as to that state of Spain, which was made known to you before, and you may have the estate of it again, when you please, some part of this affair cannot stay the disposal of your Committee. Part of your fleet must be disposed of. Your enemies are at work. It will be your interest to know how the Sound is disposed of. In Europe, Poles and Danes and Dutch combined; the Swede only on his own legs.* The consequence is of weight to you, how far you will engage. The counsels are before you. You may be informed of all, when you please. There is no engagement as yet. The charge of the fleet, next year, will amount to a million.† I would have a short day appointed to inquire of this.

* See vol. ii. p. 359, *note* *. It appears that the celebrated Christina either felt at this time, or at least professed to feel an interest in the fortunes of her cousin, to whom she had resigned the royalty.

"From Rome, Dec. 28, 1658. The Queen of Sweden is resolved to return to France. The Pope hath granted a passe for her. She pretends she will goe thence to Holland, to set her helping hand to a peace between the Kings of Sweden and Denmark; but it is supposed she hath some other designs." *Mercurius Politicus*, No. 550.

† There was a statement of "the Issues of England," annexed to "a Brief View of the Public Revenue," presented to the House, April 7, 1659. The following amount, "by way of estimate, yearly," does not reach half a million:—

| | £. | s. | d. |
|---|---|---|---|
| "For the charge of 7,500 men, to be employed in 50 ships, for a summer's guard, for seven months, at 4*l.* a man, per month - - - - | 210,000 | 0 | 0 |
| "For the charge of 5,250 men, to be employed in 35 ships, for a winter's guard, for seven months, at 4*l.* a man, per month - - - - - | 147,000 | 0 | 0 |
| "For building of ships yearly - - | 40,000 | 0 | 0 |
| "In the pay of the Commissioners of the Admiralty, and the Commissioners of the Navy, and the Treasurer's of the Navy. [See vol. ii. pp. 396, 397, *note*.] - | 7,744 | 0 | 0 |
| "In the pay of the standing officers belonging to the yards, and of ships in harbours - - - | 3,628 | 6 | 11 |
| "In the pay of the officers and seamen employed in the looking-to of ships in docks, and otherwise unemployed | 45,613 | 13 | 9 |
| "The whole charge of the Navy, by the year - | 453,986 | 0 | 7" |

*Journals.*

*Captain Hatsell.* By this your very being is in question; if you take not care for your interest in the Sound.

*Mr. Bodurda.* I move to second this.

*Mr. Knightley.* I move for Monday, and nothing to intervene.

*Sir Henry Vane.* I move for Monday. This business is of great weight, but I would not have you out your other great vote. Be upon a good foundation at home.

Ordered, to take into consideration the business of the Sound on Monday morning.

After *altum silentium*, the order to take into consideration the additional clause upon the Bill of Recognition was read.

*Sir Walter Earle.* I move whether you will take into consideration the business of the Petition of Right, *Magna Charta*, &c. as was moved formerly.*

*Sir Henry Vane.* I move to take things in order as they lie before you. First begin with bounding the power of the Chief Magistrate, how far you will have him have the militia and the negative voice; and how he may not protect delinquents by a power against justice, or be himself not accountable.

*Colonel White.* I hope the sword will be placed in the people, so as there shall be no danger of delinquents being protected.

There was a great person in the army, that said rather than the militia and negative voice should go from the Chief Magistrate, he would fight it over again, and begin next morning. This is a bounding of our power.

A gentleman desired he might name him, and then a charge might be put down against him, and be tried here.

*Sir Arthur Haslerigge.* I am altogether for unity. I would have this done, but in time. When you receive the

From "a list of the Navy of England, at this time," it appears that there were 8,682 men, in 40 ships. Besides the *Naseby* of 80 guns, and 500 men, there were 5 of 64, and the rest of various force, down to 22 guns. *Parl. Hist.* (1760), xxi. 423.

* See *supra*, pp. 170, 171.

list of the officers, it may be, you may meet with that officer then.

Let us proceed upon this vote. I am glad I have it in my hands. It is of three parts. I take the matter as it lies in the vote, and would have us first go upon the negative voice. I would have light from the gentlemen of the Long Robe. I know not whether Protector or King be the greater man. I hope we shall learn in the debate. There was a maxim in the law that the King could do no wrong. It was received and swallowed by me that the King was so bounded that he could not act in his own person, neither could any personal actions be brought against him. No action would lie against him, as against a justice of peace or constable; because he never acted but in his public capacity. A constable was less bounded in his personal capacity than the King, who could not imprison nor act any thing in his own person.

It is true we had a thing called prerogative. A great person, heretofore, was committed for saying he desired to know where that monster called prerogative was, and he would, gladly, know, what that monster could do. It was the Earl of Oxford.* It was answered, he should know what prerogative could do; and to declare it more demonstratively, it was told him that it could commit him to the Tower.

Now, if that maxim in law be still true, and this Protector be not greater than the King, then I am sure he can have no negative voice, for by that he might be able to do much wrong. If the Chief Magistrate deny any law, it is a wrong to the people. This was debated with the late King. The King denied his assent to what the House of Lords and Commons had made touching the militia, and would not consent to alter the Lieutenants. We persisted, and did it without him;† some of the gentlemen of the Long Robe's opinion then much concurring, that the negative voice was in the people. Therefore I would have that to be the first boundary: only state it now in order to the debate.

* Henry Vere, *temp.* James I. See Granger's *Biog. Hist.* (1775,) i. 324.

† See vol. ii. p. 435, *note* *.

*Mr. Attorney-general.* We may agree, I hope. We are not at such a distance. I would have this stated, and let the negative voice be the matter of your debate to-morrow.

*Sir Henry Vane.* I would have the nature of the thing opened a little, that is to be the occasion of the farther debate. I shall offer you my thoughts preparatively. You are now bounding the Chief Magistrate.

The office of Chief Magistrate hath something in it essential, and which must be inviolably kept for him for the necessary preservation of the good of the whole, and the administration of justice; and something superfluous, and very chargeable.* Such as are:—

1. A thing called kingly power, which implies the whole affair of monarchy and prerogative, which are great occasions of vain expenses and waste, all the nation over. Lay aside this state of kingly power, and keep your Chief Magistrate.†

2. The power of the Chief Magistrate as to the negative voice. The denying it to the Chief Magistrate as by the law

* Among "the Issues of England," (see *supra*, p. 315, *note* †), are "in expense of his Highness's household, yearly 100,000*l.*" and "in repair of his Highness's houses, yearly, 5,650*l.*" *Journals.*

† Thus the *United States* avail themselves of an unexpensive Executive over their widely extending Republic. Their President's annual salary is considerably less than that paid to the Lord Mayor of London. £35,000*l.* was, in 1792, the whole annual charge of the fœderal government.

It was lately shown by the Honourable Leicester Stanhope, in a debate at the India House, "that each of the twenty-four Directors is in possession of patronage, which would sell in the public market for about five times as much as the President of the United States receives for his services." *Oriental Herald,* (1827,) xiv. 195.

Mr. Thomas Cooper remarks, in 1792, that "the income of his Majesty George III., which has been regarded as not more than necessary for the maintenance of kingly dignity, may be reckoned one way or other, at 1,200,000*l.* annually." He adds, "that by the 22 Geo. III., 32,955*l.* is appropriated to pay the salaries of the Lord Chancellor, the Speaker of the House of Commons, and all the Judges of England and Wales, and 89,799*l.* 0*s.* 2¼*d.*, to the *menial servants* of his Majesty's household." See "A Reply to Mr. Burke's Invective," (1792.) pp. 18, 19.

of the nation now set up by you, is fit and requisite. When all these things are in our power, must we dispute it over again between the people and the Chief Magistrate?

The Chief Magistrate pretends to a power, not only of executing laws, but to enact laws; whereas it is the right of all to bind themselves, and to make those laws by which they are to be ruled. If corporations or any society of men have a right to make bye-laws, surely much more hath this House, which is the representative of the body of the nation. If the interest of the whole nation should lie at one man's door, it were worse than in the meanest corporation; especially to serve a single person, or the interest of a few courtiers or flatterers.

Thus it should be, that he should not deny what you find to be for your good. This our laws have declared that the single person ought to grant: *Leges quas vulgus elegerit.** It was urged by Lord Fiennes, who drew the Declaration, that it was undeniable that the King should not deny laws.†

* The following, according to *Rot. Parliam. H.* 4. *n.* 17, is part of the ancient form at the coronation:—

"Concedis justas leges et consuetudines esse tenendas, et promittis per te eas esse protegendas, et ad honorem Dei corroborandas, quas vulgus elegerit, secundum vires tuas?

"*Respondebit.* Concedo et promitto." See Husband's *Collection*, (1643,) p. 269.

"Leges, *quas vulgus*; id est," says *Milton*, "communitas, sive plebeius ordo *elegerit*. Hanc clausulam, *quas vulgus elegerit*, Carolus, antequam coronam acceperit, ex formula juramenti regii eradendum curavit." *Defensio*, (1651,) p. 252. See *supra*, p. 219, *note* †; Dr. Harris's *Lives*, (1814,) ii. 204—206.

† In this Declaration, dated May 26, 1642, and called "the Third Remonstrance," the two Houses assert "the obligation that lieth upon the kings of this realm, to passe such Bills as are offered to them by both Houses of Parliament—in respect of the oath that is or ought to be taken by the kings of this realm at their coronation, to confirm by their royal assent such good laws as their people shall choose."

They add: "Besides the words in the King's oath, referring unto such laws as the people shall choose, as in such things which concern the public weal and good of the kingdom, they are the most proper judges who are sent from the whole kingdom for that very purpose; so we do not find that since laws have passed by way of bills, that ever the

This, therefore, is of so great concernment, agreeable to the law of nature and constitution of the nation. It was before, though, if it were not, it is now in your power. Great weight was laid upon it in all propositions of peace, and so much weight depends upon it, as in the proportion of restraining or binding of power it ought to be a principal ingredient. The Chief Magistrate may do well without it.

On the other side, I would have him possess all things needful to his acting for the people; all the power to draw in the public spirits of the nation to a public interest, but not power to do them or you any hurt. This is to make him more like God himself, who can do none. Flatterers will tell him otherwise; but they that wish his safety and honour, will agree that he shall have power to do every thing that is good, and nothing that is hurtful. It is therefore necessary so to bind him as he may grow up with the public interest.

*Mr. Knightley.* I am free to proceed this afternoon; but for your safety I would have you adjourn now.

*Colonel Birch.* Bounding the Chief Magistrate is a necessary work and fit to be gone upon; but my weakness is such that I cannot agree this to be the first subject of your debate; or I should not trouble you. I cannot give my vote to this, or concur otherwise, till something else be done first; until it be agreed whether there be another House or not; for if there be, I would have the militia and negative voice disposed one way; if not, another way. I leave it before you, whether you ought not first to debate this, before you do any thing in order to the bounding the Chief Magistrate. I humbly submit it.

*Mr. Neville.* I think the last proposition, whether you will have another House, not material now; but when the whole Petition and Advice comes in debate, another House perhaps may then be thought convenient; but it is not ne-

kings of this realm did deny them, otherwise than is expressed in that usual answer, *Le Roy l'avisera*, which signifies rather a suspension than a refusal of the royal assent." *Husband*, pp. 268, 269. See vol. ii. p. 451, *note* §; *Parl. Hist.* (1762,) xi. 98, 99.

cessary you should take the old way into consideration. You may have another House, and not a negative voice. You are not going to build upon the old constitution. The Other House may be such a House as is only preparatory to this, as, among popular assemblies in other commonwealths, there was an assembly to propound laws, and another to enact them, and a single person to put all in execution. Commonwealth was a good title, but grubbed up by the title of Chief Magistrate.

The negative voice will not at all touch the Other House. It is presumed we are going to something else, though what are men? Therefore it is not fit to debate whether it shall be in the power of any person or persons to strangle the debates and pains of this House.

*Mr. Onslow.* I would have no jangling motions in stating the matter of your debate. The Other House will come on best when you come to debate upon the rights and privileges of Parliament. I would have you proceed upon the negative voice in the first place, and adjourn till to-morrow.

*Mr. Starkey.* The end of the Other House is for a negative voice, else they are useless. I conceive the co-ordination of the powers, of great use and advantage to the people; and therefore it is most fit and necessary to take into consideration first, the Other House. For if you shall deny a negative to the Lords, you may, by the same arguments, deny it to the Chief Magistrate.

*Captain Baynes.* The Other House is not yet before you; but as to the power of the Chief Magistrate, formerly so boundless: what power a single person shall have in the legislature, which is proposed as the first bounding. For my part, I think no man can tell how to set bounds to the single person, no more than to hedge in a cuckoo. Therefore I think it most fit to deliberate and agree what power the Chief Magistrate shall have, and not what he shall not have. Let it be so stated in your Bill, and that he shall have no more.

*Mr. Sadler.* All the bounds that ever I have heard of, for the Chief Magistrate, are but negatives. Exceptions do but

strengthen a rule. *Exceptio probat regulam, in non exceptis.* You plainly confirm him in all other power. I would have him so bounded by the Bill as to give him an affirmative power, and let him have no more. But that which is most necessary is, to be satisfied whether the Chief Magistrate has power to dissolve you. Inquire that first.

*Mr. Trevor.* I am not for an affirmative power. You may bound your Chief Magistrate by negatives well enough. I am glad there is that care taken to bound the Chief Magistrate, but understand not well what you mean by bounding him affirmatively; unless he were to take his power now. Your first debate I conceive should be, wherein you will bound him. I wish we may do it so as he shall not be able to do any harm; but then it will be questionable whether he shall be able to do you any good.

*Serjeant Maynard.* Declare not the powers till you declare the persons. How we can circumscribe the power before we consider the parts of the Government, I know not. We are intrusted for the people, not for the nobility. True, but by whom, if the sole power of making laws be in this House? Besides, you wholly exclude what is essential to a Chief Magistrate. You represent not him. Whether are we intrusted by the nobility, whether by the Chief Magistrate? Our ancestors, that is the Commons, did not think it fit to put this jewel into our chest. A man that has a treasure, had rather have it kept under three keys than one.

Many differences are in religion and in our civil concerns. Suppose, in process of time, it should so fall out, that the major part of this House should agree to do some strange act, so as to lay some imposition upon conscience, or the like; or suppose they should be of contrary opinion to us as to Papists, or some other thing; and one party be pulling another out of the House, would you have the Chief Magistrate consent to their law, and confirm that without more to do? You swear the Chief Magistrate to do that which is just. If you offer me that which is not just, I am bound by my oath to deny it. He means to approve laws that shall be just,

but if that be propounded which shall not be conceived to be just, shall he be necessitated to confirm that?

I know not how you can proceed clearly upon the bounding of powers, till you have determined what the persons are that are in power. I therefore move to debate of the Other House.

*Lord Lambert.* The negative voice is the most material. I know not what was meant by the Serjeant's question, Who represented the Lords? If he meant those sitting at the other end of the House, they are sufficiently represented here, both as they were electors, some of them in person, and many of them by their letters* to several places.

* Whether the regular borough-market, (see *supra*, pp. 126, 148, *notes*), where they have been said to "buy and sell seats in Parliament as openly and notoriously as stalls for cattle at a fair," was now established, does not appear. The use of *lettres missives*, it seems, was well understood by this "other House." Mr. Bethel also mentions, among "several complaints" of "the Court designs," that "Whitehall had writ eighty letters for the making members of Parliament, many of which had had their effect," *Brief Narrative*, p. 340. These *missives*, also, have been since frequently employed to preserve *Blackstone's* "kind of democracy," among his "three distinct powers." The following letter, addressed by Bishop Compton, in virtue of "the alliance between Church and State," to "the Dutchess of Albemarle, at New Hall, in Essex," I copied from the original in the British Museum.

"Madam, Sept. 25.

"I am an humble petitioner to you, that when the election of Harwich is decided, you would give my Lord Cheyne leave to take the borough in Cornwall, for his option, and that you would give me leave to recommend another person to your favour.

"Were it upon my own account, I should be ashamed to ask this: but it is for the Government and Church's sake that I beg it; for the person I would have in, will be of very great and important use to serve both: and therefore I am sure you will pardon the importunity.

"Madam, your Grace's most obedient and obliged servant,

"H. London."

*Bibl. Sloan.* (*Ayscough*, 4052).

This interference of a Lord Spiritual, calculated to render the Lower House "more a representation of the Lords than the Commons," might serve to expose, if they were not already so well understood, the *good times* of William III. The letter was, most probably, written in 1695,

Assert the negative voice to be here, and you go a great way in your business. Some say it is here, some say not. Some would say but part is here, and would have it divided. Agree this, and all other points are centered here. The best of all your fabric is to correspond with your interest here, and to assert it. It is a matter of great weight; but I would have you adjourn for the present, and take it up to-morrow.

Ordered, that the debate be adjourned till to-morrow, at nine.

The clerk entered the order thus, viz.: "That the debate concerning the negative voice, be proceeded in to-morrow morning at nine of the clock; and that nothing else do then

when Viscount Cheyne was chosen one of the members for Newport, Cornwall, which borough he had waved in 1690, and sat for Harwich.

The Duchess, on whose eccentricities see Mr. Grainger, (*Biog. Hist.* iv. 157), had married the son of Monk, and thus became a sharer in the father's royal recompense. Monk's biographer, Dr. Skinner, represents this marriage in 1670, as "the last of his human cares;" for "he died four days after." He had, however, accomplished a great achievement, in the estimate of such a mind's ambition. "He united the glories of the ancient houses of Newcastle and Dorchester, Cavendish and Pierpoint, with his own ducal coronet." *Life* (1724), pp. 372, 373.

To another peeress there was a similar parliamentary application, with very different success. This high-spirited countess, who died in 1676, thus replied to a Secretary of State of Charles II., who requested to nominate a member for Appleby:—

"I have been bullied by an usurper, I have been neglected by a court, but I will not be dictated to by a subject; your man shan't stand.

"Anne, Dorset, Pembroke and Montgomery."

*Biog. Brit.* (1784), iii. 640.

"Dr. Donne," says Mr. Grainger, "speaking of her extensive knowledge, which comprehended whatever was fit to employ a lady's leisure, said, 'that she knew well how to discourse of all things, from predestination to sea-silk.' She was strongly solicited to go to Whitehall after the Restoration, but she declined it, saying, 'that if she went thither, she must have a pair of blinkers,' such as obstruct the sight of untractable horses, lest she should see such things as would offend her, in that licentious court. She erected a monument in the highway, where her mother and she took their last farewell, on which spot a sum of money was annually given to the poor." *Biog. Hist.* (1775), ii. 53, 54.

intervene:" but it was not till after Mr. Speaker left the chair, which was not justifiable.

The Committee of Privileges sat in the Star Chamber, and then adjourned to the House, upon the business of Haslemere, in Surrey, Serjeant Waller in the chair.

The dispute lay between Captain Westbrook, Lord Onslow's friend, and Mr. Hooke, who was already admitted into the House.

Counsel and witnesses were heard on both sides, and all their electors particularly weighed, and severally put to the question at the Committee.

Captain Westbrook had fifteen capable electors, and the other fourteen; so that the Report of the Committee was for Westbrook.

Resolved there, that a minor is no good elector.*

The reason was, that he was not fit to dispose of his own estate, therefore not fit to dispose of another's, nor to choose for the whole nation.

Resolved, that a miller is not an inhabitant, unless his family be there.

The principal question was, whether the freeholders that were no inhabitants had votes in the election. Resolved the contrary, and that the bailiff not being a freeholder and inhabitant, had no vote; only by his office was to return.

The Committee sat till ten most assiduously.†

* "In *Coke* 4 Part. *Instit.*, title *Parl.*" MS.

† It appears by the following passages between General Monk and Secretary Thurloe, that the plotter for Charles Stuart was just now affecting a zealous devotion to the interest of the young Protector:—

"Dalkeith, [see vol. i. p. 227], 15th of Feb. 1658-9.

"Major Knight is chosen here, and Colonel Fitch in the northern parts, Major Knight will be sent you speedily. I hope such as have been sent from Scotland will be faithful to his Highness. I am very glad to hear things go on so well. I hope that they may be well settled, notwithstanding the diversities of opinions of men.

"Feb. 17. As for Judge Advocate Whalley to be chosen for Peblis and Selkirk, there is a Scotch gentleman chosen; but the country will not give him so much money as he expects; and so he is not like to go, but if he should not go up, and that they should choose another, which

*Friday, February*, 18, 1658.

*Mr. Speaker* took the chair at nine o'clock.

Mr. Cooper prayed.

*Sir Arthur Haslerigge.* The justice of the nation is abused by putting off the assizes. Justice should not be delayed on any pretence. I move that it be debated tomorrow, and inquired where the stop is, and that the persons concerned do attend. There is neither war, sickness, nor any special occasion for it. It was carried so closely; sometimes put off, and sometimes not, but now it is put off.

It seems Sir Arthur Haslerigge let somewhat fall, viz. "He that we intend to be our Protector."

*Serjeant Maynard* took him up.

That gentleman may not say any thing in this. He is Protector, and I hope we intend him no other. It may be that gentleman would be quit of that ill counsel which he speaks on, in case the Assizes should hold. He ought to

they cannot do without another writ, I do not doubt to get him chosen." See "Thurloe State Papers," vii. 613, 617.

Dr. Price relates, concerning his master, that "Oliver Cromwell, not long before his death, writ once to him with his own hand; and in the letter there was this drolling expression: 'Tis said there is a cunning fellow in Scotland, called George Monk, who lyes in wait there to serve Charles Stuart; pray use your diligence to take him, and send him up to me.' *Mystery*, p. 12, Maseres's *Tracts*, pp. 711, 712. See Dr. Skinner, p. 72.

A letter written "to General Monk," from "Collen, 12th August, 1655," by Charles Stuart, shows that the royal exile had, even then, good hope of his assistance at the "seasonable opportunity." See "Life of Dr. Barwick," (1724), p. 397.

This same day, Feb. 17., "Mr. R. Rookwood," who appears to have been a royal spy, bought off by the judicious application of "secret service money," thus writes to Secretary Thurloe:—

"I deliver, enclosed, the character by which Charles Stuart directed me to write weekly to him, and the means to receive letters and money." See "Thurloe State Papers," vii. 617.

give an account of his words. Nothing is so ordinary as to put off assizes in Parliament time.

Serjeant Maynard was highly moved.

*Mr. Attorney-general* seconded him, that it was not of such necessity to have assizes as was moved.

*Mr. Fowell.* People are busy at plough and hedging, so cannot attend assizes.

*Sir Henry Vane.* I second Sir Arthur Haslerigge. A delay of justice is of great consequence to the nation.

*Mr. Swinfen.* Nothing should put out the order of the day.

So the other debate departed,* and the order of the day was read.

*Mr. St. Nicholas.* There is as much reason to bind up an Aristides as a Dionysius. Your vote intends a bound. It is universal, the whole power; and nothing greater than the power of making law. You have not made him a Lycurgus, absolute. It is not properly incident to that office to have a negative. You have not made him king; but if so, anciently, kings of this nation had not a negative,† only power to deliberate on ordinances.

It is a happiness to bring the Chief Magistrate as near to be like God as may be.‡ With this, you make him the greatest prince in the world. If a good man, he will be satisfied with it; if not, it is too much.

If he have a negative, what signifies your sitting here?

* "Complaints were made," says Mr. Bethel, "that the assizes, without precedent, were put off. to the common wrong of the whole nation; and therefore, to the end that the people might receive no prejudice by the sitting of the Parliament (as the courtiers were suspected to design, to the end to make them out of love with Parliaments,) it was desired that the Pretender might be moved to command the carrying on of the assizes; but the courtiers being resolved not to lose so considerable a part of their strength as the lawyers, they would have the whole nation to suffer in the want of justice, rather than they would want one of their members." *Brief Narrative*, p. 340.

† See *supra*, p. 319, *note* †.

‡ See *supra*, p. 320.

When you have done all you can to make good laws, and he refuse, all your pains and hopes are lost. It is not probable that this House will, in civil concerns, make any law destructive to themselves.

To answer Serjeant Maynard's objections:—*

1. It is not wisdom to keep treasure but under three keys.

If he commit his treasure to other persons, I am apt to believe he will keep the keys himself.

2. It is necessary for the Other House to have a negative.

I have read that kings were bound by the laws made by the representative, though he were absent.

If a person of that House should slip into treason or felony, who should be his peers to try him? That learned man, if he were a Judge, would say he should be tried by honest men in the country.

3. If a law should be imposed to intrench upon men's consciences.

I answer. Suppose the major part should propose a law for the liberty of men's consciences, or to take away a law that intrenches on that, and the single person or another House have a negative, where are we then? I hope we are in that light, that persons oppressive of men's consciences will not be chosen. I had rather trust my liberty among seven times seventy in this House, than with seventy† in another.

My motion is, that the question on the negative voice may precede; and that the Chief Magistrate may not have a negative, nor your laws that you have prepared, be hung up for the want of consent, by a Chief Magistrate.

*Mr. Swinfen.* You are not ripe for your debate till you concur in your own constitution. You must concur in that which is naturally before.

Let us deal plainly with one another. No governments in themselves are good or evil. We have not debated whether we will have a Republic. Let us plainly debate it, and not be drawn off by indirect votes.

* See *supra*, p. 322.

† See vol. ii. p. 17, *note*.

You have voted a single person, suppose without a negative voice, and the militia.

The single person has no being but what you may put an end to when you please. What need you then debate where the negative shall be?

In order of nature it is reasonable to know the thing before the power. First, you vote Committees, and then powers. Those that would have a single person and another House, must not lose their votes.

We are not chosen a House according to law, (it is said) but a representative chosen and in full power to frame any government. To have a negative in the single person, were to reduce us to the power of a single person, for he will be able to have a negative as to his own preservation. Therefore I would have the Lords' House first settled.

*Mr. Knightley.* Is the Other House the Chief Magistrate? How came we to talk of them? There is another place in the Bill about the Other House. I only speak to the order of your proceedings, and would have us hold to the order in the vote.

*Mr. Onslow.* I am not for debating of new forms, but for stating that we live under. Keep to the order of the House, to debate first the negative voice; which is no new thing, no stranger to our laws; and when we come to talk of a House of Peers, I doubt not but if we make that House, we shall give it that just power that the ancient laws give.

*Mr. Attorney-general.* I cannot give my vote in this case, till you agree whether you will have two Houses, and first, whether you will have it a Republic. Let us know where the legislative power is, before you say such a person shall have no negative. Let us be clear in this. If there be a negative voice elsewhere, perhaps I shall agree the Chief Magistrate shall have none.

*Sir Arthur Haslerigge.* Well may I change my opinion, when those learned persons change theirs so often. It is easy to misconstrue the debates of this House if we be not sparing one with the other. It is very trivial to move any thing concerning government or the Lords' House, upon the

vote before us. The question is, whether the Chief Magistrate shall have a negative. Let us go plainly to it, and consider how to bound the power of the Supreme Magistrate in reference to the good of this nation, that he may not prejudice that; and whether it be for the good of the people that the single person should have a negative voice. I am glad to hear the name of Commonwealth is not so odious. When this House shall have made his Highness Chief Magistrate, I would not have us diverted by another question.

*Captain Baynes.* Reading the order yesterday would reconcile all.

It was read, and it was touching the negative voice, to be proceeded in.

*Mr. Swinfen.* That order was not made till after you were out of the chair.* I would not have us surprised.

*Sir Henry Vane.* If you ingenuously reason on that which is in your vote, it is clear you must proceed with the order of it, about the negative voice. The Lords' House doth not concern the bounding of the single person, the liberties of the people, or any thing in that vote.

*Serjeant Maynard.* That vote doth not bind you up as to the order of it. In your vote it is not agreed which part should go forward. Suppose you should order the negative, to whom or what will you apply it; whether to the person or the matter? I desire you will propound, whether a negative shall be now propounded.

It is most proper to concur in the Other House first. I mean not this House of Lords, or any other House. It will be a disadvantage, to those that are against a negative to have this question put.

*Mr. Neville.* It is all one. You will either have the Lords' House, or none. If you will have none, then you can have no negative. If you have one, how can that, the House of Lords, be a boundary to the kingly power? You have no such House of Peers now, which hath an interest answerable to be able to do it. Here will be a negative upon you,

* See *supra*, p. 325.

and the Chief Magistrate shall have the power of that. There is no intent to cheat. Whenever a House of Peers comes to be debated, it will not be found that a House of Peers shall be of that use now as formerly. We are upon alterations, and no thought now is to be taken of what was done by John of Gaunt, and such fellows. The Lords much outweighed before, and now the Commons and the people outweigh; and your King, not long since, before the Parliament, did oversway. So you build upon an ill foundation if you aim at the old way. You cannot build up that which God and nature have destroyed. We are upon an equal balance, which puts out Turkish government* and peerage. Laws are made to preserve things that are, not things that are destroyed. You are invested with all legal power. If you will say, all power is in the sword, that is one thing; if in the people, that is another. But it is in the people, in you, in consent. You have laid a good foundation, a single person. It now concerns you to build upon that, and to bound him, that he may lay claim to no more power than now you give him. You are in a good way. Go on.

*Mr. Attorney of the Duchy.* Make that the question, that the supreme legislative power is only in the Commons of England, Scotland, and Ireland, assembled in Parliament. I am free and clear to debate; but if you apply it singly, it can never come to a clear resolution. Make that the question, and we will singly enter upon the debate of it.

*Sir Henry Vane.* I did, and do think, that you have the sole power to bind the people. The single person joining with you, binds the thing faster, but he hath no power to deny laws to the people. Therefore the question ought to be, whether the single person ought not to be excluded from any power of a negative voice in making laws for the good of the people.†

*Mr. Reynolds.* I understand that you and your clerk are reflected upon, as for mispenning your order. The order is clear. The negative voice is expressly within the words of

* See on "a Turkish power," *supra*, p. 288.

† Thus Richmond and Sidney. See vol. ii. p, 453, *note*.

yesterday's order. There is nothing for bounding the Lords. Our business is to bound the Chief Magistrate. The Lords are quiet.* We trouble not them, nor do they trouble us. I pray those gentlemen will not prophecy.† We desired the Lords to concur with us in bounding the King in the negative voice.‡ I know not but we may go up to these Lords, and desire their concurrence that the Chief Magistrate shall not have a negative voice. Let not the Lords' House trouble you. Let it not be a stumbling block in your way. If the Lords' House will not trust us, why should we trust them?

*Mr. Raleigh.* I am not free to give a vote till this stumbling block, this House of Lords, be removed out of the way. If you admit the legislature is here, I shall know how to give my vote. I humbly conceive the other debate is very proper.

*Mr. Goodrick.* The order was mistaken and penned after you were out of the chair. How the negative voice comes in, I know not.

*Mr. Speaker.* You all agree in one thing, only differ about the manner. The bounding the Chief Magistrate was thought by all, the first thing in order in the great vote, and it was the sense of the House to debate upon the negative voice. It is true, the legislative power was spoken of as concerning it previously, by some, but the negative voice was insisted upon as touching laws made by this House alone, or by

* See *supra*, p. 152, *ad. fin.* For the only record I have discovered of any activity in the "Other House, see vol. ii. p. 439, *note* *.

"Barwick to Hyde. Feb. 16, 1658-9. Those they call Lords meet and adjourn, and consult about making a catechism, and make speeches against plays and the Common Prayer-Book. But all men's eyes are upon the Commons: for it is clearly foreseen the Petition and Advice will not support the Other House, and thereupon the Commons look upon it as a personal privilege of the last Protector." See "Thurloe State Papers," vii. 615.

† Referring probably to Serjeant Maynard's suppositions, *supra*, p. 322.

‡ By concurring in the Declaration. See *supra*, p. 319, *note* *.

this House and another, or elsewhere. This was the sum of the debate. It all tends to the same thing.

*Sir Henry Vane.* The consideration by you is only of laws passed by you, and you must hold us to the negative voice.

You must not leave the chair till the question be read. It is of dangerous consequence for two or three to direct the sense of the House, when you are out of the chair. No member can direct the sense of the House. The clerk ought not to take it.

I move that it is properly before you to debate the negative voice.

*Mr. Trevor.* There was no order to debate the negative voice; or, if any order was made, it was after you were up.

There is a necessity to debate what the negative shall be upon. If I thought the laws should come but from one House, I might perhaps conceive it fit to give the single person a power to support himself, more than if I thought they should refer to two Houses; so that it is natural to look at these two considerations. Determine this first, as it is most proper and natural for you. I have no interest that is divided from the whole. I speak not to direct you; but that you may go naturally to the business before you.

*Lord Lambert.* This which is offered you, is no part of your debate. I cannot but wonder we should have any scruple in going ingenuously on with the things before us. How came the other House to be concerned in any of the particulars of the great vote? Doth it limit the Chief Magistrate? It is so far from that, as it is rather a further strengthening and enlarging than a bounding of his power, as having a dependence upon him, and nothing to oblige to the least public interest, but their own goodness.

By your appointment agree the Government. Then appoint officers, appoint servants; for you have a House. I am apt to think we may all agree in that thing afterwards.

But I see not the delay of this work of bounding as the putting off an evil day. Therefore it is high time to fall to it;

and to know where the power is. It concerns the rights and liberties of the people; and most of all the privileges of Parliament, at least of this House. The Commonwealth, I perceive, must not be named without a brand. I hope it is no ill word.

I am apt to suspect the swelling of the power of the single person. I fear it may get too high. I know the last Protector was not willing to use all that power that was put upon him. I would very gladly see what you will do for the people. I would have you go on to debate the negative voice.

*Mr. Attorney-general.* The order yesterday was no order, because the question was never put. However, this House is master of its own orders. I move to put the question, whether the power of the legislature be singly in this House, or the single person ought to have a negative; or the other, whether you will have another House. Let the question nakedly come, that every man may know what to give his vote to.

*Sir Arthur Haslerigge.* This is an exceeding catching question. But that is not the question; but what power the single person shall have; and, if we make laws for own good, whether the single person ought to do us any hurt in that.

The sole legislative is here. I am of that opinion, that we would give a legislative power, to the good of the people, but not to do us any mischief; that he may ingratiate into the people; that, if his Highness consent, we may humbly thank his Majesty.—"The King can do no wrong."

If this question go on, we surprise ourselves. It is not intended but the Chief Magistrate should have part of the legislature.

*Serjeant Maynard.* I would be content the question should go, that he should not have a negative upon all laws that are for the good of the people: whether, when the House of Commons only shall propound bills to the Protector, he shall have power to deny them?—make that your question.

*Mr. Onslow.* We have recognized a Protector. I would have us recognize a Parliament. I had rather change an order than that any gentleman's vote should be debarred.

They have declared themselves; so it is not improper to state that Government that must have to do with this single person. I shall willingly go on to debate of what is the Parliament of England.

*Sir Anthony Ashley Cooper.* The bounding the single person is the most proper thing in debate, and I apprehended we had now been upon the Chief Magistrate's limitations. It is objected, that men cannot vote unless they know whether there shall be another House. That objection is made as if we were constituting a new Commonwealth. If that should be, then unless you know what power your single person shall have, how will you declare the power of the other House, for this will still lay in your way? I have not heard that debated yet, whether we are upon the footing of the Petition and Advice, or on a new foundation, or on the old Constitution. I think we are yet to be supposed to be upon the foot of the old constitution, unless something appears to the contrary. Therefore, I would not have us surprised in a vote. We may by this, put a limitation upon this that we mean not of; and instead of bounding the Supreme Magistrate, be rather bounding the liberty of Parliaments.

*Captain Baynes.* I would not have the legislative power in any one constitution, but in two; and they both to be representatives of the people.* When the House of Lords was in a co-ordination of power with you, they did near upon represent half the property of the nation. The Bishop of Durham of old represented a whole county. There are now no members at all for that place.†

* See the United States, vol. ii. p. 460, *note.*

† In 1653, there had been one member for Durham, and in 1654, and 1656, two for the county and one for the city. Richard, in convening this Parliament, had reverted to the old distribution of elective franchise.

"This county or bishoprick, having anciently a petty king or palatine of its own, who called a parliament of his own barons, was therefore looked upon as an exempt jurisdiction, and was either not permitted, or did not claim the privilege of sending any members to Parliament." Since "a special Act," in 1673, there have been two members for the county, and one for the City of Durham. See Willis's *Notitia Parliamentaria* in *Magna Britannia* (1720), i. 636.

The Lords represented at least in old time, two thirds of the rest, who having so great a propriety in the nation, it was all justice and reason they should have a co-ordination in the Government.

It is my judgment to have two Houses. And if we can find out such persons as have such proprieties as may balance this House by property, in any considerable measure, it is fit we should have them; but if there be none such, I would have another House, indeed, that there may be a propounding and an enacting power, but to be chosen either by the people or by some other way: for there never was any Commonwealth, but there was one body to propound laws, and another to enact.

I shall offer you a question, to be the ground of this debate. Whether there shall be a negative voice upon the people represented in Parliament, in making of laws for their own good, without naming any House?

*Mr. Scot.* Many questions are offered, and some press for preference. You will find a complication of questions wherever you begin. It is equally ensnaring to me to give a negative before I know he shall be Chief Magistrate, as well as before you have another House. We must either go *ascendendo* or *descendendo.* In the order of nature this seems first: that, having recognized his Highness as Chief Magistrate, we should agree what power he should have. Then, if a House of Peers, say what shall their power be: and out of both these may result our power. It is my opinion that the people should have no final negative voice upon them.

The Romans, after Romulus's death, desired a king, *omnes regem poterunt;* because they knew not what liberty was.* They were an outlawed people. I would plainly have no negative upon the people, otherwise than *deliberative demurrative*, &c.†

* "In variis voluntatibus," says *Livy*, "regnari tamen omnes volebant, libertatis dulcedine nondum experta." *Hist.* lib. i. cap. xvii. (1749), i. 24. (Amidst their various opinions, all desired a regal Government, not having yet proved the sweets of liberty.) † See *supra*, p. 321.

I know not upon what foot we are. We are not King, Lords and Commons, we lost that about 44 or 45, before we lost our virginity.

We are not upon the Petition and Advice. All do not sit here upon that. So we are only upon the foundation of the people.

*Mr. Hewley.* Upon what foot do we hang? If it be not on the Petition and Advice, I know not how we came here. By the order of nature we should know the constitutive part, before we agree on the emanations and power from this. We make the Chief Magistrate less than a shadow if he have not a negative. If there be but one House, I shall say the Chief Magistrate shall have a negative. If two estates, haply no negative. Of necessity, and naturally, you must proceed upon the other House.

*Colonel Morley.* I see this bounding is a tender point. We are loth to come at it. We are now putting a negative upon ourselves, instead of bounding the Chief Magistrate, and now are setting up another House. So that, when both those are set up, we shall have a negative upon neither.

*Mr. Swinfen.* I would have the question put, whether the Chief Magistrate shall have a negative upon such laws as shall be presented unto him from Parliament; a secure question, without naming this or either House.

*Colonel White.* Before we have laid the foundation, we are come to the superstructure. A question is proposed, which would be very comprehensive of the matter, to take into consideration whether the legislative is or is not fundamentally in this House? Till you assert where the legislature is, it will not be so fit to think where to dispose of it, or how. Till then, the conveniency or inconveniency of disposing of it will not be known by you. Whence came the Other House, but from this House? It was not of itself, nor came out of the clouds.

*Sir Henry Vane.* Whilst you are saying that you are taking into consideration the negative, you allow him an affirmative voice. Yet we sit here intrusted with preserving the rights of the people. If we be of opinion that the single

person should have the negative voice, let us own it, and declare it, and not take it in by a side-wind. If the people think they are not competent judges of what is good for them, let us say so plainly, and let that be the debate.

*Sir John Lenthall.* The order yesterday was made without consent of the House. This is the most intricate question that ever came within these walls; for we are not of our own foundation. The people have not conceived that this is the Parliament. For those persons that say this is the Parliament, may as well say the Other House is the Parliament.

Till we go to the right constitution, we shall never know where we are. There never was any constitution but under four persons; the King, Lords Spiritual, Temporal, and Commons. As I shall not go so high as to vote a King, so I shall not go so low as to believe and acknowledge that all power is in this House. What extravagances have been, from supposing all power was here! The country sent us here to consult *de arduis regni*, with the King and his nobles. See upon what grounds you stand. If you conclude yourself a Parliament without another House, then go on that debate; and if we be the only Parliament, vote that.

*Mr. Reynolds.* It ill becomes that gentleman to reflect upon the Long Parliament. I doubt he forgets who sat in that Parliament from beginning to end, that his father sat in the chair all the time.* This looks just like the beginning of the Long Parliament, when speeches with such reflections used to come from under the gallery.

I appeal, if instead of bounding the Chief Magistrate, we are not about bounding ourselves. If we pass the Lords with a negative voice, then we bound ourselves again. So that some gentlemen are content, if we but bind, it is well enough. We are so loth to come at the point. A great Chancellor, when counsel would with art go from the point, used to say, they play with the point; and that he thought the plague was in the priest.† I hope there is no plague in

* See vol. ii. p. 29, *note*.

† Referring, probably, to the directions, *Lev.* xiii., for discovering the plague of leprosy, by application to the priest.

this. I would have you therefore plainly to debate if the the Chief Magistrate shall have a negative voice.

*Mr. Manley.* I move, like wise builders, to examine the constitution. I would have the Other House first debated, because you know not where to apply it. If you intend really to go to a Commonwealth, debate it. To say, we have the whole power, what is that but a Commonwealth?

The question is only for precedency of one that is doubtful, or of the other that is clear. What is meant by Chief Magistrate and also by bounding? This last is not meant to take all away that is in the Chief Magistrate by right; but only those excrescences and suckers which grow from that tree, from which this nation hath received good fruits.

The Other House doth lie in our way, if the legislative be here, we need go no further.

*Mr. Chaloner.* I move to debate whether the Chief Magistrate shall have a negative upon what this House shall declare, as the Parliament of England.

*Mr. Bodurda.* By that motion there is more uncertainty. I know not what you mean shall be the Parliament of England. Is not setting bounds a bounding ourselves, as well as bounding him? The more you give him, the less you have yourselves. The Other House is most natural to go first upon. It is impossible for any man to give his vote clearly till you explicate the terms that must come first or last. The Other House is the balance; it tells minutes between the two estates. The most natural question is for the Other House.

*Mr. Croke.* There are weighty reasons on both hands. You were pleased to vote the single person, which has general acclamation. Then you proceeded to bound the single person. That the Other House is any part of bounding is not apparent to me. Nothing we do now does exclude that debate of the Other House. In the Bill, the question of the two Houses will have its place. We may debate upon this negative properly without touching the Other House. There is uncertainty in what is propounded. First consider, what is fit to bound the Chief Magistrate in, and then dispute the Other House.

*Mr. Turner.* This question of precedence has spent this day, and may extend two or three days longer. I would have it put, if you will adhere to the words of the order, which, it seems, is arraigned.

*Mr. Knightley.* Because that order is so arraigned, which is not parliamentary, let us go upon the former order, which was to bound the single person.

*Mr. Sturkey.* I move that the constitution be first debated.

*Mr. Hungerford.* I apprehend not such difficulty for gentlemen to give their votes. Nothing is to be binding, till the whole be passed. None then can be bound by their votes.

*Mr. Speaker.* You have been debating a negative in general. Make your question, if the Supreme Magistrate shall have a negative upon laws presented to him by Parliament. Then you will be engaged in another debate, what shall be the Parliament?

*Mr. Attorney-general.* Make any plain question, and I will consent to it; so that none may be surprised. I cannot give my vote upon such uncertainty.

*Mr. Turner.* Put the question whether this House will proceed upon the negative voice, before you have resolved the constitution of Parliament.

*Mr. Onslow.* I second that motion. It will be most reconcileable.

*Colonel Bennet.* I must look upon that order as binding, till you take it off. It is not parliamentary to arraign your orders. You arraign the whole journal, your whole records.

*Mr. Raleigh.* I shall not dispute that order. It is a constant course of Parliament to appoint a Committee every Saturday night, to overlook your orders. You are going to bound your Chief Magistrate. Will not you know the bounders, as well as the bounded? Will you bound him to he knows not what, and you know not what? If it shall appear that the legislative is in this House, I shall agree the Chief Magistrate a negative. If in two Houses, I shall never give my vote that then the Chief Magistrate shall have a negative: so that it is clear my vote is out of doors till you clear this.

*Mr. Steward.* I second what Mr. Turner and those gentlemen have before moved.

*Sir Henry Vane.* I insist still to adhere to your orders of yesterday.

*Mr. Swinfen.* If you affirm that order, you cannot proceed; because your terms are not explained. It is plain you will bind votes both ways.

*Mr. Jenkinson.* I second the motion. You may satisfy all by a plain question; whether the sole legislative be in this House? Or put the question; whether there shall be any negative at all in this House?

*Sir Arthur Haslerigge.* By the orders of the House we must have this question. It is strange to me how this other House comes in, when you are bounding the Chief Magistrate. Must we now debate it, as a privilege? We have tried it with our swords. Let us not lay new foundations for a civil war.

He was taken down by Colonel Cox, and Colonel Morley moved him on again.

He then went on to beat the old point, that the negative voice first be gone upon, according to the orders.

*Mr. Stephens.* I am very spare of speaking, for sure that petition is true. I cannot make sense of it, that the Chief Magistrate shall have a negative, and you say not to what persons and things. It will come properly under another House, if you agree on another House. Let the numbers and qualifications be agreed on afterwards.

*Serjeant Maynard.* All I desire is to settle your question without ambiguity. Put it that his Highness shall have a negative upon Bills presented by this House. Let that be the question.

*Mr. Neville.* The inconveniences are equal, on both sides. I doubt, by dividing the question, this great question will be out of doors. The King's oath was that he would confirm the laws, *quas vulgus elegerit.** Those that will have another House, why should they distrust their own strength? The question is clear enough, and by it every man may have his free vote.

*Mr. Bumpfield.* If you put the question that the Chief Magistrate shall have a negative on laws made by Parlia-

* See *supra, p.* 319, *note* *.

ment, then you still bring in debate what is meant by the Parliament. I take this to be the order; that the order leads you directly to debate whether you will have another House. It is touching the negative voice generally. That must be understood of the other House. You cannot go one step till that be determined. If you do adhere to your order, it leaves it indefinitely still. It is proper to your question to consider whether you will have another House.

*Colonel Matthews.* I see not why we should lay aside this order. It is most natural to proceed upon this. In the beginning of the Long Parliament this was one of the great questions, and then there was a House of Lords. I see no man's opinion tied up. The Parliament in 54, disputed this long.* Then there was no Other House.

I would not have the Chief Magistrate to be denied a negative as to all. He should have a negative as not to——† the government. I beseech you go on with your order.

*Serjeant Seys.* It is most proper to debate first, whether you will have another House: first, of the way of making laws, before whether he shall have a negative or no. Some previous debate is necessary.

*Sir John Northcote.* I never knew this House claim a constitutive power, but a declarative power. The question was then, not whether they should take away a privilege from the King of making laws, but that he should not refuse good laws. Our consistency ought not to be denied. We are three estates. I wonder how the power that we claim

* See vol. ii. p. 395, *note.* It was resolved, Nov. 10, 1654, according to *Whitlock,* "that if the Protector consent not to bills presented to him, within twenty days, they shall pass as laws without his consent." *Memorials,* (1732), p. 608. See *Parl. Hist.* (1763), xx. 378, 379. On 1656, see vol. i. p. 20, *note.*

There was a provision, in 1654, "that such Bills contain nothing in them contrary to such matters wherein the Parliament shall think fit to give a negative to the Lord Protector."

On the division there were,

"*Noes* 85. Sir Charles Broghill and Sir Charles Wolseley, Tellers.

"*Yeas* 109. Sir Richard Onslow and Colonel John Birch, Tellers." *Journals.*

† Blank in the MS.

now, comes to us; either by usage, constitution, or conquest. We must not keep that by the sword, which we have got by the sword. In a peaceable time, I hope such sharp arguments shall not be used.

*Mr. Disbrowe.* I never knew it denied to make a question clear, when any gentleman excepted, and said they could not give their votes if it passed so. When there was a House of Lords, the negative voice might be debated with the King in clear terms; but now it is not clear that you are * ———. You are not under that constitution. If you say that there is another House, or not another House, till that be determined, I cannot give my vote clearly. There are, fairly, some things, wherein, if there were never so many negatives, you would not deny the single person a negative. As, if the Government should all be pulled up by this House, shall he be bound to consent to that?

*Mr. Gott.* Every negative contains an affirmative. I cannot be satisfied to give my vote, till I know what shall be the affirmative; or till I know, whether two negatives or one are upon me, which is a great difference. Two and one differ and quite alter the debate. Put your question thus: whether, in consequence of the negative voice, you will first take into consideration the Other House. Or, put the question, whether to put it or no. This you must come to at last.

*Mr. Speaker* was going to put the question.

*Sir Henry Vane* stood up, and gave his reason against taking first into consideration the Other House.

It was offered, that the militia and negative voice be included in the vote of your Chief Magistrate. Then it was answered, that the previous vote provided that nothing should be binding. It was then allowed the reason. Why is that reason denied now? That Parliament that made the other House, surely had the legislative? They must either own that the legislative power was in that House; else nothing passed to them. If it stand not on that Constitution, then it must stand on the old Constitution.

* Blank in the MS.

I shall clear it, that we are going to settle that which is fallacious. It will strip you at one time, and at one breath. You make void all your former expressions, which to me is as clear as day. If they can do none of those things till they have set up a co-ordinate power, then you can pass nothing here, but must have their concurrence. Pass this, and you will have that brought in upon you from the Other House, that will confirm the single person in all things that concern him, and so your own liberties are left at loose. If you have a mind to do aught for the people, do it clearly. Pronounce your judgment, that the Chief Magistrate shall have no negative upon the people assembled in Parliament. Do this, else I shall take it for granted that you will have no fruit of your debate, and that you intend nothing for the people.

*Mr. Onslow.* I did not think to have heard it pressed that it was any part of the quarrel to take away a House of Peers. I hope, in due time, we shall return where we were. We are now creating a Government out of the ruins of the people. We must take it for granted that our Government is destroyed; but that we build. I know no difference between our constitution now and before, but in the name of the single person. I would have us give no more than we gave the King. I know no reason why we should grow so wanton as to give less to this person.

*Captain Baynes* took exception against the word "wanton," but was decried.

*Mr. Bulkeley.* It needed not explanation. I think Sir Henry Vane has said something that stands in need of explanation; not a slip in passing. I agree, the ground of your war was not to take away the single person or the House of Lords. When another House is stated, it will, I believe, be found exceedingly needful. Are you afraid that your laws shall be perfect? I wish all the Judges might perfect them, not with a negative power. I more dislike the word Commonwealth than I did in the morning. If you admit this, you may as well lay him aside. If he be not *major singulis*, he will not be able to suppress and allay factions,

which you will see will break out. I am against advancing the single person beyond bounds as much as any man; but to make him insignificant * ———. I do not think that any of those gentlemen that came irregularly into the Government †, can think that we are upon the same footing still. Because there is a willingness to condescend, let us not go further off. Let us debate this. It comes orderly before you; is genuine to your question. It was never denied to any member, if it was not plain. If nothing but this, it were enough to gain my assent. A liberty will be left to these gentlemen afterwards, to except against any part, because of the previous vote. It is but reasonable, and genuine, and natural.

*Lieutenant-general Ludlow.* It is plain that there is catching in this question. Sadden not the hearts of the people by putting in bounds upon the people. The Representative of the people of England cannot be called a faction. I desire to debate the Members of Scotland and Ireland,‡ first, before you put any more upon us. We sit by the Petition and Advice, as I take it.

The question being propounded, that this House shall proceed to determine the power of the negative voice in the Chief Magistrate, in the passing of laws before the constitution of the Parliament as to the two Houses be first resolved on,

*Mr. Speaker* declared for the *Noes*.

*Sir Arthur Hasterigge* for the *Yeas*.

The House was divided. The *Yeas* went forth, *contra* Sir Henry Vane's opinion.

*Yeas* 86. Mr. Brewster and Colonel White, Tellers.

*Noes* 217. Sir John Coppleston and Mr. Francis St. John, Tellers.

*Lord Fairfax*, *Sir Christopher Wyvill*, and *Colonel Neville* divided with the *Yeas*.

* Blank in the MS.

† Perhaps, referring to those who sat without taking the oath to the Protector. See *supra*, p. 68, *note*.

‡ "Chosen," says Mr. Bethel, "by the Pretender's interest." *Brief Narrative*, p. 343.

*Mr. Bodurda* moved for leave for Mr. John and Mr. James Ashe to go into the country for ten days, to attend Mr. John Ashe's* corpse. Leave was given.

*Sir Henry Vane* and *Sir Arthur Haslerigge* moved to take up the debate to-morrow upon the militia; but it was called down, as improperly moved, and cried, not ingenuous.

*Serjeant Maynard.* I see nothing that is disingenuous.

*Mr. Trevor.* The reasons are the same as to the other. You must first determine your constitution, before you dispose of your power.

*Sir Richard Temple.* I move to proceed upon the Other House as most proper.

*Mr. Weaver.* Sixty persons sit amongst you,† that have no vote in your legislature. Any sixty persons that walk in Westminster Hall may as well sit. I would have that your first consideration, lest it be told it you afterward, when you would not hear of it.

They have no right at all to sit, by law. Not but that I would have them qualified.

*Sir John Lenthall.* Though they cannot sit by the law of the land, yet it is fit, on this great work of settling the nation, that we should have them here.

*Colonel Matthews.* I am against that.

*Colonel White.* I have no faith to convert any body by my motion. I only stand up to move that Mr. Neville's business be heard to-morrow.

*Mr. Starkey* and *Mr. Attorney-general* moved against it, now you are contending for breath.

*Mr. Scot.* I doubt that those that are for Ireland and Scotland are in a *præmunire.*

Resolved that to-morrow sevennight be appointed to hear counsel on both sides, in the case between Mr. Neville and Mr. Strowde, late Sheriff of the county of Berks.

Resolved, that the House do take into consideration the

* "Mr. Ashe the elder." See *supra*, p. 241, vol. i. p. 362.

† The Scotch and Irish members. See *supra*, pp. 28, 29, 31.

constitution of the Parliament as to the two Houses to-morrow morning, and that nothing else do then intervene.

The House rose at past two.

The Committee of Trade sat, but I was not there.*

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*Wednesday, February* 19, 1658-9.

*Mr. Scawen* reported from the Committee † for inspection into the accounts and revenue of the Commonwealth, that

* The following reference to some late parliamentary discussions, is in a letter dated "Holyhead, 18th Feb., 1658-9." Addressed "to Lord Henry Cromwell, Lord-Lieutenant of Ireland," from "the Earl of Thomond," then on his way to London:—

"Mr. Mabbott tells me heere nothing but of a vintner, which, not elected, sat as a member, but not for Scotland or Ireland; soe that my Lord President Coote, nor others at Dublin, need not suspect being welcomed into the House. The speech of confident Haslerigge, against the recognition, was found fit only for lawghter in the House." See "Thurloe State Papers," vii. 618.

"Henry, Earl of Thomond," according to Mr. Noble, became "allied to the Protectoral House of Cromwell, by the marriage in 1660, of Sarah, daughter of Sir Francis Russel, Bart., and widow of General Reynolds, whose large dower made her no inconsiderable fortune to him. Though he had submitted to bear offices under the Cromwells, yet he professed all loyalty towards the royal brothers, Charles II. and James II., to both of whom he was one of the Lords of their most honourable Privy Council in Ireland. His Lordship died in 1691, aged 72." *House of Cromwell*, (1787) ii. pp. 427, 428.

*Ludlow*, relating the exertions of the Parliament, in 1641, to suppress the Irish Rebellion, says: "The Lord Forbes, a Scotsman, was sent with a party into Munster, where he greatly annoyed the enemy; and being furnished with some ships, sailed up the Shannon, and secured several places upon that river, particularly Bonratte, the residence of the Earl of Thomond. The Earl, unwilling to oppose the English interest, and no less to make the rebels his enemies, chose to withdraw himself into England, and to leave his house to the soldiers, where (though he pretended he had no money to lend them to supply their wants) they found two thousand pounds buried in the walls, which they made use of for the payment of their forces." *Memoirs*, i. 20, 21.

† See *supra* p. 312, 313.

they should often have occasion to send to the Commanders-in-Chief, both in Ireland and Scotland, for the knowledge of the forces in pay under their commands, and to others, concerning the revenue of those nations. And that the Committee did therefore desire, that their dispatches in reference to these affairs, might be signed by Mr. Speaker.

Resolved accordingly. *

*Serjeant Waller* reported from the Committee of Privileges the business of Petersfield; and that it was the opinion of the Committee that the election was void; and prayed that a new writ might issue out.

*Sir Henry Vane* and *Mr. Knightley* moved, that it be re-committed; for that the Chairman ought to report the state of the whole business, as it stood by the Committee.

*Serjeant Maynard* seconded the motion.

It seems the election was too hasty. No proper notice was given to the electors; for the electors had notice at nine, and the election was at ten.

*Sir Arthur Haslerigge.* It was no good election, for want of time.

*Sir Walter Earle.* Recommit it, that it be examined at the Committee, who are the proper electors.

The opinion of the Committee was, that the election was void for want of due notice.

*Mr. Jenkinson.* The whole matter was included in the question and evidence, as to both cases.

*Serjeant Maynard.* A Committee ought not to bring in a report without the *tota materia.* Else, how shall the House know it. If the persons capable of electing were there, then there was notice. The principal point is, who have the right of electing. I pray that it be re-committed.

*Mr. Goodrick.* We conceived at the Committee that there was no due notice; there being eighty electors, and but thirty present. Therefore we judged the election void. I would, therefore, have no re-commitment.

* See *Journals.*

*Mr. Scot.* I am of opinion, that the fault was not in the want of notice, but upon the merits of the election.

Resolved, that the case concerning Petersfield be re-committed.

The order of the day was read, upon the debate of the Other House.

*Mr. Drake.* We have not commission to meddle with the constitution from those that sent us here. It has pleased God to reduce the constitution of the nation to a single person and two Houses of Parliament, as it was before. It is our honour to look forward, and not to go back, that we may be builders and not destroyers. Our ancestors have sworn to maintain the constitution: it is mostly for the good of the nation, to have such a constitution.

1. It is good for our laws to be often read over.

2. It is for the good of ourselves. By putting a question upon them; we may have a question put upon ourselves. They * may be a screen between us and the people, as well as between us and the single person.

3. The two Houses are good for the peace of the nation. The old Lords have still a right. It doth but sleep, and will at one time or another awake upon us. If we take away the rights of the peers, we may have a barons' war again. There are great attempts and endeavours of your enemies to agree. It behoves us to agree among ourselves.

4. A separation is endeavoured between the martial and civil powers. We had need to strengthen the hand of the civil power.

My motion is, that you declare it your opinion that there shall be two Houses of Parliament.

*Mr. Edgar.* I find in precedents, formerly, that there was a power (to be tried by the peers in criminals, and, in civils, their bodies not to be attacked) so inseparable from the Lords' House, that no power could take it away. The engagement† but takes it away by implication. The Petition and Advice, they say, gives it a right, I cannot say as to the force of that.

* The Other House. † See vol. ii. p. 279, *note* *.

Divers boroughs had no representative then. This right of the House of Lords is not taken away by any legal power. Then if they be in possession, be it by what power it will, they are in, and ought to hold their right.

It will be very useful for the Commonwealth. They have had their education in arts and arms. They were the procurers of *Magna Charta*,* by the Barons' wars; and many counsellors are useful in making laws. There has been no forfeiture, no transferring of their power. If I were satisfied that the people sent us not here to do this; I conceive we came here to do right and justice, and to maintain the honour and birthright of that House. The wisdom and strength of the body should go together. It is a very dangerous thing to alter laws and customs. A proverb says, "Old laws and new meat are best for Englishmen."

I would have another House of Lords. Matter of honour and reverence is as much a right as any thing else. The old Lords have no voice in elections,† and it were hard for them to be barred from sitting in their own House, and from being serviceable here.

*Mr. Young.* I perceive the question is, whether two Houses or not? The question is whether there be a Lords' House in being, and not whether this shall be one for the future. First determine whether the Other House be upper or no. It was told you not long since, that the Other House was down, by the Petition and Advice. He was never answered yet. Those insignificant mincing terms, Other House, do not at all agree with my judgment. I would have it a House of Lords. Therefore first agree whether the power of the Other House be determined by the Petition and Advice. No other law is of force for them.

*Serjeant Wroth.* Whether there be two Houses, depends upon the validity of the Petition and Advice. A Parliament not free, and yet the acts are binding. Otherwise, it would strike at that act.

*Colonel Gibbons.* This is a question of great concernment

* See vol. i. p. 406, *note* *.

† See *supra*, p. 126.

in the tendency of it; the setting up another power, with a jurisdiction in some cases concurrent with you, in some other, superlative, above you. Thus you will have two superintendants over you.

You are therefore to consider,

1. Whether there be another House or not.

2. Whether there shall be, or not.

If there be, it must be upon the old foundation or upon a new constitution. The last Parliament cashiered the old foundation. The victorious Long Parliament, the dictators and legislators, they have laid them aside.* The House's Advice is no legal footing, as was moved learnedly by Colonel Terrill.† Therefore, if there be any in existence, it must be upon some new constitution, *de facto;* but whether *de jure* is the question.

First examine whether you have another House, and then, *rebus sic stantibus, rebus sic cadentibus.*

*Colonel Terrill.* It cannot be *de jure* in the Protector; it being but personal in the other Protector, and executed by him, and dead and buried with him.

*Serjeant Waller* undertook to answer Colonel Terrill.

All his cases are at common law: none upon Acts of Parliament, which are to have a reasonable construction. There was a plain intention in the law for him and his successors.

In this Act, an Act of Constitution, it was declared that his Highness might summon another House. His Highness constituted another House. He had a power to constitute them; and the power is executed.

*Mr. Knightley.* Those gentlemen that stand at the bar, put me in mind of what I moved the other day, that none should have votes that would not take their places; so that if men will not take their places we must needs have another House.

I desire that the Act, 16 *Caroli,* on this case, be read. The dictators and legislators, it is said, did take that House away. The late army had no power to dissolve, much less

* See vol. ii. p. 388, *note.* † See *supra,* p. 223.

to annihilate that House. Therefore, instead of two Houses, we shall have two houses in being; one by that statute which I would fain have answered, and you have another House in being by the Petition and Advice.

*Via tuta est via recta.* We were called to advise with the nobles, and we were indeed in the Lords' House, and there we found some sitting that call themselves Lords. We must consider what constitution we are upon; what we have, not what we shall have. We have a constitution by a single person, and a House of Lords, or Peers, which you will. I can consent to no other.

I move, therefore, that you declare the House of Peers to be the other House.

*Mr. Goodrick.* In that very law, 16 *Caroli*, there was a clause that the House of Peers should not be prorogued, adjourned, or dissolved, without their own consent.

Another law, the statute for triennial Parliaments, is unrepealed, by which twelve peers ought to meet to summon Parliament.*

I am against building with rotten timber, but not against building with old timber if it be sound. Determine, first, whether you will have a House of Peers, and then, whether that House of Peers be taken away or no. I pray that the Act of Parliament, 16 *Caroli*, may be read.

That Act was read accordingly. It was, that neither House should be adjourned, prorogued, or dissolved, without their consent and own orders.

The Act for Triennial Parliaments was also read, and it was that twelve peers might issue writs for Parliaments under pain of loss of places and preferment, and punishment by succeeding Parliaments.

*Sir Arthur Haslerigge.* I am glad to see these two Acts

* See vol. ii. p. 427. This Act, which was repealed in 1664, provides that, in case of neglect by the Chancellor to issue writs, "The peers of this realm shall meet in the Old Palace of Westminster, and they, or any twelve or more of them, shall issue out writs in the usual form in the name of the King's Majesty, to the several sheriffs, &c." See Scobell's *Acts*, (1658,) p. 2.

read. I move to explain whether the Petition and Advice have not made void these two Acts. I would be satisfied from the Long Robe. It is said the Petition and Advice has made two Houses of Lords.

*Mr. Attorney of the Duchy.* I know not what those two Acts were read for, unless to take the Speaker out of his chair. Yet I do not think that the intent of those gentlemen was to take you out of your chair, and put in your predecessors.

By the same rule, *Magna Charta* may be called for, the restoration of the Lords, Spiritual and Temporal, the Recognition of King James,* &c. and I know not where you will end, till you recognize Charles Stuart for King.

Invalidity is endeavoured to be put upon the Petition and Advice, and upon many good Acts in the end of the Long Parliament; but a nullity upon them upon any pretence whatever, brings us to what, and where, we were.

The House's Petition is a good law. I hope we shall not look so far back; but go on. I hope we shall have no more such Acts called for.

*Mr. Fowell.* The acts made in the latter end of the Long Parliament and the Petition and Advice, are both good laws until repealed.

* In 1603-4, the first Act passed in his reign. The Parliament "recognize and acknowlege that immediately upon the dissolution and decease of Elizabeth, late queen of England, the imperial crown of the realm of England, did, by inherent birthright, and undoubted succession, descend and come unto his most excellent Majesty, as being lineally, justly, and lawfully, next and sole heir of the blood royal of this realm." See *Parl. Hist.* (1763), v. 53—55.

"This was complaisance indeed," says Dr. Harris, "and this, together with their ascribing to him, in the same 'the rarest gifts of mind and body,' and acknowledging 'his great wisdom, knowledge, experience, and dexterity,' could hardly help rivetting in his mind his absurd opinions, and high self-estimation." *Lives,* (1814), i. 214, 215.

"Jaques n'avoit pas demandé cela," says *Rapin*; "au contraire, selon toutes les apparences, en repetant plusieurs fois dans son Discours, qu'il étoit Roi indubitable par sa naissance, il vouloit faire entendre qu'il n'avoit pas besoin de la confirmation du Parlement." *Histoire,* (1725), vii. 33.

The Lord Protector did not think fit to make every lump of gilded earth a Lord. He took another measure. Their valour and virtue were objects to him of their honour.*

The Barons anciently were the great bulwarks and defence of the liberties of the nation. How oft did they fight for *Magna Charta*. They did great service in old times, and so did those in the quarrel. There is a necessity for a House of Lords.

*Mr. Bethel.* I observe from that Act,† that we are the people's Parliament, and not any single person's. That is all that I shall move.

*Mr. Manley.* I differ from that gentleman. The Petition and Advice has made those laws of force. It is a question of fact that there is a House. You exclude the right. I would have the question comprehend both; whether there shall be another House or no.

It will come in debate whether it is proper to have another House. I shall speak to none of the laws that have been read. I think those laws are of force till you annul them. I think they‡ are restored by the Petition and Advice. I conceive clearly they are restored.

The Protector has the same power that any King of England had§. He has power to create Barons by writ or patent.|| I wish the old Lords, so many as are capable, had

* See the late Protector's choice of Lords, vol. ii. p. 468.

† The Petition and Advice.

‡ The Lords.

§ Mr. Bethel, to whom this speaker, "one of the Long Robe," (see *supra*, p. 247,) appears to be replying, denounces "the disingenuity of the court-party, being made up of household servants, officers, suitors for offices, lawyers (the corrupt part of whose trade cannot be maintained but by a corrupt government), Scotch and Irish members." He then represents "such as were most open" as "confessing plainly, that they were so far from bounding the Chief Magistrate, that they desired to give him as much power as any King or Prince of England ever had." *Brief Narrative*, pp. 343, 344.

|| The power of conferring titular distinction, Burke's "Cheap Defence of Nations," appears to have been assumed as inherent in the executive. It was not assigned to the Chief Magistrate by any of the

been called. His Highness went by another measure. Honour is the edge of valour; take this away, and you take away the edge.

projects of government during the Protectorate; and Oliver was very sparing in the use of this prerogative, for the creation of peers. He was indeed rather liberal in the bestowment of baronetcy and knighthood, and Richard and Henry each dubbed two almost ephemeral knights, but Oliver created only two viscounts and one baron.

"Charles Howard, of Gilsland, in Cumberland," (see vol. ii. p. 415, *note* *,) according to Mr. Noble, was "created Baron Gilsland, and Lord Viscount Howard of Morpeth, July 20, 1657." On the fall of the Protectorate and the Commonwealth, Lord Howard soon found another creator, and advanced a grade in the peerage, being "created, by King Charles II., Earl of Carlisle," probably in acknowledgment of some meritorious secret services during the royal exile.

"Edmund Dunch of little Wittenham, in Berkshire," was "created Baron Burnell, by his cousin the Protector, April 20, 1658." On Richard's resignation, he "retired from the public scene," prompted by a peer's very natural "dislike to an absolute republic," and by another motive as natural, "the jealousy the Commonwealth-party entertained of him." When "he perceived the restoration of monarchy likely to take place, he again took an active part, and was chosen one of the Committee of Safety, in 1659. This procured a good reception for himself and his family from King Charles II. Probably he had some expectation of a new patent for his nobility, but he died a private gentleman in 1678." *House of Cromwell* (1787), i. 439-448, ii. 162.

Mr. Noble has ornamented his second volume with "a fac-simile," of Baron Burnell's "original patent of peerage," discovered by "the late Lord Dacre," among "the writings in Sir Henry Oxendon's Evidence Room." The following is the preamble:

"Oliver, by the Grace of God, Lord Protector of the Commonwealth of England, Scotland, and Ireland, the dominions and territories thereunto belonging, to all and singuler Dukes, Marquesses, Earls, Viscounts, Barons, Knights, Provosts, Ffreemen, and all our Officers, Ministers, and Subjects whatsover, to whom these our letters shall come, greeting. Amongst other the prerogatives which adorne the Imperiall Crowne of these Nations, none is of greater excellency or doth more amplifie our favours, then to be the ffountaine of honor, and those who, being of antient descents, have ample patrimonies for their supportation, and have deserved of us and the publique, to assume to titles of honor and dignity, for a reward to them and an encouragement to others. Therefore," &c.

*Whitlock*, notices, "Aug. 21, 1658. A Bill signed by his Highness, for

Lords were ever since Parliaments were; only they sat together.* The 8th of Henry IV., they then sat asunder. Had there not been a House of Lords, then we had not been a House of Commons neither.

They always fought battles for our liberties. How often engaged against the King for the Parliament. Two worthies of them are never to be forgotten; one by land and another by sea. Essex† and Warwick.‡

If you will have another House, they cannot be Commons. If any thing, they must be Lords. Commons against Commons cannot stand. Shall they dispose of your purse? One hand is enough in a purse. If you have not a House of Lords already, I wish we may have a House of Lords.

*Mr.* ——— §. I move to declare, whether, as to this point, the Petition and Advice be of force.

*Mr. Nathaniel Bacon.* This statement will not hold you

a patent to make me a Viscount, and in Secretary Thurloe's hand to be passed; but I did not think it convenient for me." *Memorials*, (1732), p. 674. Such was the sober judgment of this learned lawyer, and such the short story of the third and last creation of a Protectoral peerage, only a few days before "the ffountaine of honor," for ever ceased to flow.

* See vol. ii. p. 349, *note* †. † See *ibid*, pp. 448—450, *note* ‡.

‡ See vol. ii. pp. 311, 315, *ad fin.* 450, *notes* *. He had been appointed by the Parliament in 1642, to be admiral of the fleet; recommended to them, as Mr. Godwin remarks, by "his known alienation from the Court, the flexibility of his temper, and his singular aptness for gaining the affections of men, especially in the ordinary and middle classes of society, added to his eminent talents and abundant wealth." *Commonwealth*, (1824), i. 192. The Earl, however, did not decline to act under Cromwell; and, till his decease in 1658, a few months before the death of the Protector, appears to have been ranked among the most favourite courtiers of Whitehall.

"Cromwell seemed," says Lord Clarendon, "to be much afflicted at the death of his friend, the Earl of Warwick, with whom he had a fast friendship; though neither their humours nor their natures were like. And the heir of that House, who had married his youngest daughter, died about the same time: so that all his relation to or confidence in that family was at an end; the other branches of it abhorring his alliance." *History*, (1712), iii. 647.

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long. *De facto*, King and Lords are taken away. There is something in the nature of a law on foot, which is the Petition and Advice. By that, another House is set up; whereas, before there was but one. It is not so much a new Constitution, as a reviving of the old with taking off the exorbitances.

You are not yet come to the manner of the House; but the question is, whether the Constitution of the Parliament of England ought to be by two Houses?

I think it ought, from long continuance. It hath been so for many hundred years. Long usage hath so settled it, as Acts of Parliament cannot alter it. No Act of Parliament can take it away; nor can the single person be taken away without special authority.

This Government hath been interrupted, *de facto*, and put out of practice; but the right cannot be taken away. The people of England have a right to the single person and two Houses of Parliament, and it cannot be taken away without their consent.

I would not now consider what it shall be, but whether the Constitution shall be in two Houses or no.

*Mr. Stephens.* The state of the question is well moved to you by the gentleman that spoke last. It is clear that the Constitution was by two Houses.

We all aim at settlement. I hold life and estate by *Magna Charta*, thirty times confirmed. It is clear, that the ancient Constitution was a House of Lords. Ever since the fourth of William the Conqueror, you will find the nobles a House of Peers. How they came to forfeit that I know not; particular men may. The laws read are, without doubt, not repealed. I am clear that these laws are not repealed.

The latter end of the Long Parliament took them * away, and last Parliament restored another House. You have both laws before you. I was always against taking away the House of Peers; and that upon account of the covenant. I made

* The Lords. See vol. ii. p. 388, 430 *note* *.

that covenant with God, and not with the Scots. The act by which that House was taken away, was made by a kind of surprisal too.

I tell you truly, I am for the ancient Constitution by two Houses. Justice is always pictured with a pair of scales. The two Houses were so. Sometimes the Lords were too heavy, and sometimes the Commons were too heavy. No bills for monies did ever come from that House.

You ought to restore the ancient House of Lords, if one may be added to the other. I am bound by my covenant to maintain the privilege of Parliament. I think too, we must restore the House of Lords, as a point of policy and prudence. They may be a good screen on both sides; between the magistrate and the people. Let us build upon good and sound foundations.

The question being put in the affirmative, that the Constitution of Parliament doth and ought to consist of two Houses,—

*Sir Henry Vane.* Here has been a learned debate; but, by the question, I know not how to give my vote. If the Constitution be by the old right, I must go one way; if by another right, another way; but if both these might be taken away, then the question must be whether we shall have any or no.

If you say, the Constitution of Parliament consists upon the old laws read, I may give my *yea*. If upon the Petition and Advice, I may give my negative, I am exceedingly perplexed which way to give my vote. I would have the words "shall be."

*Mr. Bulkeley.* The question gives a man latitude enough to give his vote, whether he will have it upon one footing or another.

The question was again put in the affirmative.

*Sir Henry Vane* moved an addition, "As the state of affairs have been since the war," but it was decried.

*Mr. Godfrey.* The question is complexed of matter-of-fact and matter-of-right. They are different, therefore move it singly, that it ought.

I cannot assert the right, till it be debated whether the Other House be the House that ought to be. It is not proper, when both these are in debate, that we should admit either. I desire the word "doth" may be left out.

*Colonel Matthews* seconded the motion.

*Mr. Trevor.* The word "doth" left out, leaves out a great many of our senses. It is a word which may relate either to the old or new Constitution.

*Serjeant Maynard.* You ought in justice to condescend, if any person be unsatisfied. The word does not stick with me. Leave out the word "doth," however, to satisfy all persons.

I hear nobody offer that it was part of the quarrel to have no House of Lords. They showed themselves for you, in a time of hardness. They did oppose your enemies. You could not have held out laws to the people, in that time, but by their ordinances. They were innocent, so let us not go away with that mistake that they were as nocent as the King.

Put the question upon the word "ought," and leave out the word "doth."

*Colonel Bennet.* I look upon this question as that, which, at the long run, may cost us dear. There are different understandings in the matter of this question. Let us not be too hasty, but hear one another. Many arguments have been used for the right of hereditary peerage to legislature. I have heard it learnedly argued that, not only by ancient usage but by the common law of the land still in force, the ancient peerage are restored, and now in being. I shall consent they may have had such a reasonable claim to offer, as other things of like nature have had, witness the Court of Wards,* and Star Chamber,† and Bishops. These had no natural right; but only a right by usage, which is no right.

* See Sir Arthur Haslerigge, vol. ii. p. 437 and *note*. See also "Of the Court of Wards and Liveries," Sir T. Smith's "Commonwealth of England," b. iii. ch. v. (1633,) pp. 232—242.

† "There is," says Sir Thomas Smith, "a court, of the which, that I can understand, there is not the like in any other countrey. In the terme time, the Lord Chancellour, and the Lords, and other of the Privie

I was for a single person, though, if the condition of the people were as receptive of a Commonwealth as it might be, I still have thought a Commonwealth better for us. I shall contend for a mediocrity.

I cannot like it, to have five hundred men set over us for them and their heirs to have a legislative over us and our heirs. I never understood the covenant in that sense as

Councell, so many as will, and other Lords and Barons, which bee in the towne, and the Judges of England, specially the two Chief Judges, from 9 of the clocke, till it be 11, doe sit in a place which is called the Starre Chamber, either because it is full of windowes, or because, at the first, all the roofe thereof was decked with images or starres gilded.

"The punishment most usuall, is imprisonment, pillory, a fine, and many times both fine and imprisonment. The matters belonging most commonly, are by statutes:—as is taken away of maids within age, against parents' or guardians' will; all notable forgeries, counterfeiting letters or privie tokens; slandering of nobles, and seditious newes; all notable riots and unlawful assemblies; all notable deceits and all kind of cousenage, &c." See *ibid*, b. iii. ch. iv. pp. 223—231.

"This Court," says *Rushworth*, "is taken little notice of, either in the Reports or other books of law. In the ancient Year-books, it is called, *Camera Stellata*, not because the Court is adorned with stars, but for that it is the great court. It was a glorious sight, upon a star-day, when the Knights of the Garter appeared with their stars on their garments, and the Judges in their scarlet; and in that posture they have sat from nine in the morning till five in the afternoon. And it was usual for those that came to be auditors, to be there by three o'clock in the morning, to get convenient place and standing.

"Archbishop Whitgift constantly was for maintaining *Magna Charta*, that none ought to be fined, but *salvo contenemento*, and commonly in his sentence mitigated the acrimony of those that spake before him, and the slavish punishment of whipping was not heard of among them. But when this Court came to be delighted with blood, and nothing would satisfy some clergymen but cropt ears, slit noses, branded faces, whipt backs, gagged mouths, dungeons, banishment to remote islands, eternal separation from wife and children; then began the English nation to lay to heart their slavish condition, if this Court continued in its greatness." *Hist. Col.* (1706,) ii. 348, 350.

This Court was abolished by an Act passed July 5, 1641. See *ibid*, iii. 112, 115; *Parl. Hist.* ix. 440—444. "The Parliament," says *Ludlow*, "proceeded to correct the abuses that had been introduced in the preceding years. Whereupon, the *Star-Chamber*, the *High Commission Court*, the *Court of Honour*, with some others, were taken away; and the power of the Council Table restrained." *Memoirs*, i. 13.

now used. I look upon that as exclusive of this family, and inclusive of Charles Stuart. I have no such opinion of any in this House.* I know not what may be.

I would fain have it agreed, if restoring the old peerage, or that way, be not inclusive of that and exclusive of the other. I do consider this power of legislature in a single person, and in another House, hereditary, and if it be possible for any man to apply his arguments taken from the statute of 16 *Caroli*, exclusive of Charles Stuart, I shall be glad to hear it.

If they who are for monarchy, will be content with the good things that are in it, we shall be content that all the good reason of monarchy and of another House may be converted to our use. Another House, for the castigation of debates, to prevent passion and too much precipitation, that will fully answer the reason of another House. But for the law of 16 *Caroli*, I conceive that clause of the Act, that they shall not cease to be, is improperly tendered. It is set aside,—

1. By the calling of another free Parliament, by virtue of a new election and constitution.

2. A greater power than the power that made that House, hath taken it away. I mean not any power on earth, but God himself. He hath let us know that it is he that planteth and plucketh up, and taketh away. I am of opinion that he hath taken it away by a long series of providences, and what God hath taken away, I shall never plant again. It was not taken away in a corner. They may have peace in themselves that did it. God hath dissolved that Parliament. That satisfies my conscience. I cannot plead that any jury determined it.

I am willing that two Houses should be, upon the reasons of utility; but I cannot consent to hereditary power in those that sat below our ancestors. I shall be willing to grant you my honours upon condition you will give us an hereditary legislature from such as our grandfathers sat by their sides and took pleasure in them.

*Mr. Higgons.* I am glad to see this done, that we may

* Yet see L. G. Ludlow, *supra*, p. 145.

plead for our ancient constitution, that we were born to. This House was set up long, ages before ever a House of Commons was.

No good Christian can argue from events. Because Constantinople is taken from the Christians, *ergo* they must not endeavour to recover it.

I would have the question put, that there ought to be two Houses of Parliament.

*Major Beake.* As to the first argument, destructive to the single person, because the single person may call five hundred, and set them over you: yet you have no cause to fear this new nobility.

1. I suppose he will have a retrospect to what other princes have done. Or suppose the single person should nominate five hundred peers, or more, to grow up over us and overtop us, such a numerous nobility will rather strengthen your hands than his; for, by experience, we found the numerous nobility of King James* was the destruction of his son. When King Charles began to multiply Lords, they struck in with you, and deserted the King; *ergo*, that will be a rock, a peg on the top of the Bill, which will direct him on that behalf. It may be you will limit the number.

As to the second argument, a greater power hath taken it away. Then let every man's mouth be stopped. Let no man attempt to set up a Commonwealth.

Though God in his providence hath taken away the nobility, yet what God doth providentially, he not always approves. That he did approve it, is not clear to me. To untie this knot, we may say he did not do it approvingly. I take the single person and the Commons as two scales, the House of Lords as the beam. Both scales are subject to factions and tyranny and extravagances. The beam is prudential. The power, for seven hundred years transmitted to

* At his accession in 1603, they amounted to 77. On the accession of his son in 1625, they had increased to 97, consisting of 1 Duke, 1 Marquis, 37 Earls, 11 Viscounts, and 47 Barons. See *Parl. Hist.* v. 9—11, vi. 410, 41. See also vol. ii. p. 448, *note**.

them, they have as much right to it as the gentleman has to his cloak. Usage is a good right, if ancient. If nothing be right but what is natural, he has not right to his victuals, his meat and drink: so that there is but a *tantum non* to make it natural. It is so twisted with the constitution, that five hundred for one upon the poll, would be for a House of Lords. I never knew any Christian against the constitution, only against persons.

Laws went out here without their lustre, not so practical and useful. By no law of England can the Judges sit in the House of Commons. They must sit in the Lords' House, else we want their grave and sage advice. We have been tumbling ever since they were taken away. We have sworn by the covenant to maintain the two Houses; and the Parliament might as well take away *meum* and *tuum*, as a House of Lords.

*Mr. Jenkinson.* Your question is not of conveniency or inconveniency, but of right. Then the other arguments will weigh nothing. I conceive it a great question, and fear whilst you vote them Lords, you vote yourselves slaves.

I find their names in all your laws, but by what right, it appears not to me. Some say the old Barons were by merit,*

* Dr. Knox, while he is ably exposing the courtly theories of Burke, and especially his description of "what he calls a true natural aristocracy," says:—

"Most of the titles of nobility, and other civil distinctions were taken from war; as a marquis, a duke, a count, a baron, a landgrave, a knight, an esquire. The inventors of arts, the improvers of life, those who have mitigated evil and augmented the good allotted to men in this world, were not thought worthy of any titular distinctions. The reason is, indeed, sufficiently obvious. Titles were originally bestowed by despotic kings, who required and rewarded no other merit but that which supported them by violence in their arbitrary rule.

"That the best and ablest men should govern the worst and weakest, is reasonable: and this is the aristocracy appointed by God and nature. But what do we mean when we say the best and ablest men? Do we mean men of the best families; that is, men in whose families riches and titles have long been conspicuous? By the ablest men, do we mean men who possess the greatest power, by undue influence, in borough and

some by patent, but I conceive by neither. It was neither writ nor patent gave it to them, but their tenures and possessions gave it them. He that had so much in possession, or so many Knights' fees, was by law a Baron, and might challenge a right to sit in Parliament.*

There was a law in King Ethelbert's time, that if any person came to have good possessions by his tenure, he was to be a Lord, or Theyn, as it then was called. In the 11 Henry VII., the law was for Archbishops, &c. that hold of the King *in capite*. "Let them do service to the King, and be present at the King's courts." Mr. Selden understands it to be present in Parliament. This was by their tenure. No writ was then, but every man that had right might come. The first distinction between the Barons, *majores et minores*, was in the latter end of King John, as appears in *Magna Charta*. In the last year of that King, upon this statute, were several writs to distinguish them severally. The Barons, *Majores* were to be called *separatim*, and the *Minores* were to be

county elections, though the exertion of that power be strictly forbidden by the law and constitution? Or do we mean men of honest, upright, and benevolent hearts; of vigorous, well-informed, well-exercised understandings? Certainly the latter sort, which forms the aristocracy established by God and nature. This is gold: the king's head stamped upon it, may make it a guinea. The other is only copper; and though the same impression may be made upon it at the mint, it is still intrinsically worth no more than a halfpenny." *Spirit of Despotism*, S. xxv. (1794,) pp. 204—206.

"I have sometimes," (says Lord Bolingbroke, as quoted by Dr. Knox) "represented to myself the *vulgar*, who are accidentally distinguished by the title of king and subject, of lord and vassal, of nobleman and peasant; and the *few*, who are distinguished by nature so essentially from the herd of mankind, that, (figure apart) they seem to be of another species. The former loiter or trifle away their whole time; and their presence or their absence would be equally unperceived, if caprice or accident did not raise them often to stations wherein their stupidity and their vices make them a public misfortune. The latter come into the world, or at least continue in it after the effects of surprise and inexperience are over, like men who are sent on more important errands." *Ibid*, p. 210.

* See vol. ii. p. 446, *note* †.

called, generally. The *Majores* at last came to exclude the rest. The excluded for a time took it well, but out of their ashes came the Commons. These were first called in the time of Henry III. Even at that time the Commons began to grow upon the Lords, and all their glass is now run out. Almost all that power is in this House, the Commons having now whatever possessions and tenures made them considerable.* The Lords have no interest now, and signify no more than you. How can you now make those men Lords, by any other reason than to make twelve pence to go for twenty shillings. You may vote them what you please, but should you say so, other people will value it, at the same value. If they be not Lords in the country, it will signify nothing. It is not your voting of them to sit in another House will make them so.

If you will have another House, limit them. Let it be part of the Bill, that this House doth declare that there shall be two Houses; and then you may limit them, as you have done the single person.

*Serjeant Maynard.* I would have the question look forward as much as may be, and as little backward as you can. If we look too much upon the point of right, it may bring us upon some rocks by pressing it too far. We must go that way which comes nearest settlement. The question before you will answer every man's sense, to debate after right or conveniency, or what he please. If you put it in the same way as you put the single person, that will do best.

The question was put in the affirmative, that it be part of this Bill to declare the Parliament to consist of two Houses.

*Colonel Matthews.* I move to consider whether you do not destroy yourselves by this question.

The question was put both in the affirmative and negative.

*Mr. Sadler* stood up, and it was agreed that he stood up before the negative, and so he went on.

A power to laugh is essential to a man, but he does not ab-

* See *supra*, p. 88, *note* §.

solutely consist of it: so, that may be essential to a Parliament that is not constitutive of a Parliament. By putting this question, you conclude that all Parliaments that were before or since the House of Lords, were no Parliaments.

Say whether for hereafter, or whether convenient to have another House. It may be, I can give my vote. I would have the question plain.

Resolved, upon the question, that it shall be part of this Bill to declare the Parliament to consist of two Houses.

*Mr. Onslow.* I would now have you take care to bound this House, as well as you intend to bound the Chief Magistrate.

I shall mind you what was done in the King's time. I would not have more given to this single person than was comprehended in the propositions at the Isle of Wight.* There was then a short Bill to bound the peerage, both as to number ——† I would have you declare some additional clauses:—

That all peerages made after the great seal was taken away, be void, and that no Peers be afterwards made but such as shall be by judgment of both Houses.

He offered a Bill, it was but ten lines.

*Major-general Kelsey.* It is improperly moved to bound them till you have determined that they are a House of Peers.

*Sir Arthur Haslerigge.* It was not improperly moved by the honourable person that offered the Bill.

*Sir Henry Vane.* You have not voted them peers. It is

* See vol. ii. p. 21, *ad fin.* Godwin's *Commonwealth* (1826), ii. 474. "The propositions," says *Perrenchief*, "that were sent to be treated, were the same which had before been offered to the king at Hampton Court. The Commissioners were five of the Lords' House, and twelve of the Commoners, and with them some of their Presbyterian ministers, who were to press importunately for their church-government, to elude the king's arguments for Episcopacy, and," adds the courtly Episcopalian, "only to impose, not to dispute their own." See "The Life of Charles I.," (1666), pp. 178, 179.

† Blank in the MS. See vol. ii. p. 453.

moved that they are the King's men. Then let them come after the King. First bound him, and then bound them.

*Mr. Godfrey.* The paper is not improperly offered. It may well be taken into consideration.

*Mr. Attorney-general.* I would have bounding this House first taken up, because it is easier to bound the Chief Magistrate than to bound them.

*Mr. Bulkeley.* I second that motion.

*Captain Baynes.* It is most proper now to go to the negative voice. The objection is answered that was made, that we knew not how to dispose of the negative, till we knew whether you will have another House.

I would have it referred to a Committee, to consider of a way how you will qualify and bound this Other House, and that you now proceed to bound the single person.

*Mr. Bodurda.* Surely you mean it shall not be another House of Commons; then you will have two hands in a purse. None here surely mean it a House of Ladies.* So surely it must be a House of Lords.

I would have you debate the powers and qualifications tomorrow.

*Mr. Reynolds.* Those that were anciently of that Other House, the old Lords, ought to sit here; and I hope you mean it so, that they shall not be excluded.

*Colonel Birch.* I look upon this agreement among us, to be the return of the prayers of the good people. I would have you now proceed to bound this House, before you talk of the persons, and take up this on Tuesday morning.

*Mr. Goodrick.* It is first most proper to give them a

* Perhaps a pleasantry designed for Mr. Neville, who was, probably, now in the House. He had published, in 1647, a satirical pamphlet, entitled, "The Parliament of Ladies, or Divers Remarkable Passages of Ladies in Spring Garden, in Parliament assembled." This was presently followed by "The Ladies, a Second Time assembled in Parliament. A Continuation of the Parliament of Ladies," supposed to be "written by the same hand." See "Some Account of H. Neville," prefixed to *Plato Redivivus*, (1763), p. 5.

name, as you did your Chief Magistrate, and then dispute their powers.

*Mr. Solicitor-general.* It is fit to set bounds first, and then to qualify the persons.

*Sir Henry Vane.* There must be the thing before there can be bounds.

He took exception against Colonel Birch's notion, that the returns of our prayers are, to bound the people by setting a House of Peers over them. Observe that.

*Mr. Stephens.* It is most natural to set the bounds first.

*Captain Baynes.* If you call the old Lords, it is not in your power to bound them without their consent. If another House by you is to be constituted, then the case is different.

*Mr. Neville.* It is clear that the bounding of Peers is like that which was said of the King: it is like hedging the cuckoo.

The question was put in the affirmative, that the House will proceed, on Tuesday morning, to the bounding of the other House of Parliament.

*Mr. Turner* moved to change the word "bound," for "power."

*Captain Whalley* moved that the word "bound" may stand.

*Mr. Trevor* moved that both words be in, viz. "bound the powers."

*Mr. Bodurda.* I move only to consider the bounds and powers of the other House.

*Mr. Bampfield.* It is not yet determined by you that you will have another House under that title; else you admit the Petition and Advice. Make your question the bounding of the two Houses.

*Sir Henry Vane.* I see, now, we are for bounding every thing but the single person. Whatever you may agree upon, they must consent to it, if you set them up.

*Mr. Bulkeley.* Put it, the bounding of another House.

*Mr. Goodrick.* Let it be thus, that you will take into consideration the powers of each House.

But it was decried.

*Mr. Onslow.* There may be as much reason for bounding

the House of Commons. We have seen how all have exceeded their bounds. I would have the question, upon bounding both Houses.

*Major-general Kelsey.* First declare what that House shall be.

*Colonel White.* If you bound them not before, you will find them boundless.

*Mr. Trevor.* I doubt you are going to set up another House; that is three Houses. Put it, to limit the power of the other House.

Resolved, that the bounds of the powers of another House, in relation to the former vote, shall be taken into consideration, the first business, on Tuesday morning next, and nothing to intervene.

Resolved, that Sir Henry Lee have leave to go into the country for a week.

Resolved, that Sir Henry Vane be added to the Committee of Privileges.

The House rose at almost two o'clock.

The Committee of Privileges sat till almost eight, in the House, upon the business of Walton, Serjeant Waller in the chair.

Counsel and witnesses were heard on both sides: yet they did not finally determine the business; but adjourned the debate of it till Thursday at two.

Resolved, at that Committee, that one that claims right to be an elector, cannot be a witness to prove another in the same predicament, to be a fit elector.

*Sir Arthur Haslerigge* and *Sir Henry Vane* took exceptions at it, and will move the House against it.*

* "General Monk to Secretary Thurloe.—My Lord; I have received your letter, dated the 17th instant. I am glad to hear, that the affairs of parliament succeed so well, though but slowly; I am sorry some officers of the army should trouble themselves with things they have nothing to do withall; but you need not doubt for the officers here. I hope we shall give you no trouble no way, but be satisfied with what his Highness and the Parliament shall settle. For news here we have none. All things are quiet and well."—See "Thurloe State Papers," vii. 623.

*Monday, February* 21, 1658-9.

This day the Lord Fairfax preferred a petition in behalf of the Duke of Buckingham, for his enlargement.*

*Mr. Onslow.* I move that he be at liberty, not upon the terms that Lord Fairfax moved, but upon the principles of common justice, and that he be released upon his security. He that has been trusted with three nations, we may well trust him with a single person. He offers his security.

*Colonel Clark* and *Colonel Mildmay.* Refer it to a Committee, before you remit him. It may be dangerous to give such a precedent.

*Mr. Scot.* I move for his release, upon Lord Fairfax's security.

*Sir Anthony Ashley Cooper.* One person cannot do you so much harm by his liberty. It is no ill precedent of liberty. While we have an eye of punishment upon delinquents, let us not wound ourselves, by leaving arbitrary precedents.

I have not so much as a correspondence with this person, or any of that name. Let it not be thought, whatever is in our hearts, that we shall have ingratitude to that person that offered the petition. The care that Lord Fairfax will have of him, in his family, will be beyond all security you can care for. You may well trust him.

*Sir John Northcote.* Say, in your vote, that it is upon Lord Fairfax's security; to save your time of another debate.

*Sir Henry Vane.* By what I understand by your debate, it is no more than what is agreeable to your justice. Your discharge is but conditional. You cannot be too jealous. Consider the ground you are going upon, to leave the difference between family and family.† Others, at liberty, are as dan-

* See *supra*, p. 48, *note* †.

† This sentence is probably incompletely reported. Perhaps it was designed to show, that having returned to the ancient constitution of two Houses and a single person, the only difference now, was between the Cromwell and the Stuart family. Thus new intrigues in favour of the latter would be encouraged, and might be reasonably expected.

gerous as he; the Marquis of Worcester* and others. But to discharge him, upon this way you take, is but agreeable to your justice. You cannot imprison him but you must imprison his lady.

* The father of this nobleman, who was a zealous Roman Catholic, died at an advanced age. His name became remarkably connected with the story of Charles I., by Dr. Bayly's publication of "A Conference betwixt his Majesty and the Marquesse of Worcester, at Ragland Castle, *Anno* 1645." See Dr. Heylin's *Bibliotheca Regia*, (1659,) pp. 65—102. With the Marquis, the King had passed several weeks, soon after the battle of Naseby.

Annexed to this *Conference*, appears "His Majestie's Answer to the Paper delivered in by the Marquesse of Worcester, concerning the Antiquity, Universality, and Sanctity of the Church of Rome;" from which it might be imagined that a *Hoadly*, and not a *Laud*, had been the King's favourite prelate and ghostly counsellor. The following passages may reasonably excite the regret that the course of Charles had ever been diverted, by the death of Prince Henry, from the Archprelacy of Canterbury to the crown of England:—

"My Lord, I perused your paper, whereby I find that it is no strange thing to see error triumph in antiquity, and flourish all those ensigns of universality, succession, unity, and conversion of nations, &c. in the face of truth; and nothing was so familiar, either with the Jews or Gentiles, as to besmear the face of the truth with spots of novelty.

"Controversies cannot be decided by the Catholic Church, but by the Scripture, which is the thing by which the nearness unto truth must be decided; for that which must determine truth must not be fallible. But whether you mean the consent of Fathers, or the decrees of General Councils, they both have erred. I discover no Father's nakedness, but deplore their infirmities, that we should not trust in arms of flesh. They have oftentimes contradicted one another, and sometimes themselves."

"But who then shall roll away the stone from the mouth of the monument? Who shall expound the Scriptures unto us? One pulls one way, and another, another. By whom shall we be directed? You that cry up the Fathers, the Fathers, so much, shall hear how the Fathers do tell us how that the Scriptures are their own interpreters." The King adds very apposite quotations from *Irenæus*, *Clemens Alexandrinus*, *Chrysostom*, &c., and thus concludes his answer, as if a *Chillingworth*, rather than a *Stuart*, had guided the pen: *O si sic omnia!*—

"Wherefore we see the Scripture is the rule by which all differences may be composed. It is the light wherein we must walk; the food of our souls; an antidote that expels any infection; the only sword that kills the enemy; the only plaster that can cure our wounds; and the

*Mr. Reynolds.* If you leave it without agreeing the security, you may spend another day. Therefore, agree of two indifferent persons of 20,000*l.* security, leaving out this lord. Let him also be engaged himself upon his honour. You cannot be too wary at this time.

*Mr. Trevor.* No security can be so great as that noble lord's security. I pray that he may give security, as he himself has offered it.

*Captain Hatsell.* I move that he be discharged, and to leave out the words, "notwithstanding his delinquency."

*Mr. Chaloner.* I hear that the King of Scots* has no power

only document that can be given towards the attainment of everlasting salvation." *Ibid.* pp. 103—109.

The Earl of Glamorgan, who had succeeded his father in 1649, as Marquis of Worcester, was now justly regarded as "dangerous." He had been engaged in advancing the King's project of a coalition with the Irish rebels, to secure their aid against the Parliament. Milton, among his proofs that "the King was ever friendly to the Irish papists," charges "the Earl of Glamorgan" with having accepted a "commission to bring over ten thousand of them." *Iconoclastes*, (1649,) p. 126.

This transaction, which strongly implicates the character of the King, has been better understood since Dr. Birch, in 1744, with his usual accuracy, and diligent research, investigated the subject. See "An Inquiry into the Share which Charles I. had in the Transactions of the Earl of Glamorgan, afterwards Marquis of Worcester, for bringing over a body of Irish rebels to assist that King in the years 1645 and 1646." To the second edition, (1756,) is annexed "An Appendix containing several Letters of the King to the Earl of Glamorgan, from the originals in the Harleian Library of Manuscripts." Dr. Harris has largely considered "whether Charles excited or encouraged the Irish Rebellion." *Lives*, (1814,) ii. 389—408.

* This title had been conferred on Charles Stuart by the Parliament of Scotland, a few days after his father's execution, on certain conditions, including an acceptance of "the Solemn League and Covenant." Being disappointed in his expectations from Ireland, by the vigour and military success of Cromwell, he, however reluctantly, determined to purchase the crown of Scotland, on the rigorous terms proposed, at whatever price these terms might be estimated *in foro conscientiæ*. Thus he engaged to the Scotch Commissioners, at Breda, "to remove from his counsels all who stood excommunicated by the Kirk, that he would take the National Covenant, and Solemn League and Covenant, and prosecute the ends thereof," &c.

On these conditions Charles Stuart landed in Scotland, June 23, 1650, in quest of a crown; or, like Saul, "to seek his father's asses," according

of this person, nor has not had these four or five years. I would have you release him upon security, and his own honour.

to the remark of a sarcastic republican. "There had been debates on the passage," says *Crookshank*, "concerning the King's taking the covenants, to which he seemed refractory; however, at last he declared his willingness," and proceeded to make the required subscription; having first uttered before the Commissioners the following oath:—

"I, Charles, King of Great Britain, France, and Ireland, do assure and declare, by my solemn oath, in the presence of the Almighty God, the searcher of hearts, my allowance and approbation of the National Covenant, and of the Solemn League and Covenant, above-written; and faithfully oblige myself to prosecute the ends thereof, in my station and calling; and that I shall observe them in my own practice and family, and shall never make opposition to any of these, or endeavour any change thereof."

This was followed by "a most remarkable declaration from Dumfermling, August 16, 1650;" in which, "though His Majesty, as a dutiful son, be obliged to honour the person of his royal father, and have in estimation the person of his mother, yet doth he desire to be deeply humbled before God, because of his father's hearkening to, and following evil counsels, and his opposition to the work of reformation, and to the Solemn League and Covenant, and for the idolatry of his mother; the toleration of which in the King's House could not but be a high provocation to him who is a jealous God, visiting the iniquities of the fathers upon the children." Further, "His Majesty, doth profess and declare, that he will have no enemies but the enemies of the Covenant; and no friends, but the friends of the Covenant."

*Crookshank* adds: "When the Rev. Mr. Gillespie put the pen into this Prince's hand, to subscribe the declaration, he told him, 'that if he was not satisfied, in his soul and conscience, beyond all hesitation, of the righteousness of the subscription, he was so far from over-driving him to run upon that for which he had no light, that he obtested him,—yea, charged him in his Master's name,—not to subscribe that Declaration; no, not for the three kingdoms!' To which the King answered: 'Mr. Gillespie, Mr. Gillespie, I am satisfied, and therefore will subscribe it.' The truth is, Charles could swallow any thing." See "The History of the Church of Scotland," (1749,) i. 39—44.

"The King," says Bishop Burnet, (on the Declaration,) "was very uneasy when this was brought to him. He said, he could never look his mother in the face if he passed it. But when he was told it was necessary for his affairs, he resolved to swallow the pill without farther chewing it. So it was published, but had no good effect; for neither side believed him sincere in it." *Own Time* (1724), i. 57.

It is related by this eye and ear-witness, that "the King wrought

*Mr. Solicitor-general.* I think when that noble Lord says he will engage himself, it is more than 20,000*l.* I am ready to take that noble lord's engagement, that he shall be answerable to justice, rather than any thing else that is offered.

himself into as grave a deportment as he could. He heard many prayers and sermons, some of great length. I remember," says the Bishop, "in one fast-day, there were six sermons preached without intermission. I was there myself, and not a little weary of so tedious a service. The King was not allowed so much as to walk abroad on Sundays; and if at any time there had been any gaiety at Court, such as dancing or playing at cards, he was severely reproved for it." *Ibid.* p. 53.

Charles Stuart had not long to "dwell in decencies," before it was determined to dignify his brows with the crown of Scotland; being (according to the *Tabula Regum Scotiæ Chronologiæ*) her 110th King, from Fergus I., contemporary of Alexander the Great; and he proved the last king which Scotland welcomed, till the late visit from George IV.

Charles arrived at Scone January 1, 1650-1; "being placed in a chair, under a cloth of state," in the hall of the palace, he was addressed by the Chancellor, and intreated to accept the Crown, on the condition of defending the "rights and liberties" of the people. Having made a pious and satisfactory reply, the nobles, &c. "accompanied his Majesty to the Kirk of Scone." Here I must leave Charles Stuart, to endure a penance of some hours' continuance, and could almost compassionate the young royal libertine, thus enforced to act a "most religious king," seated in "the throne or chair of state, set in a fitting Place for his Majesty's hearing of sermon, over against the minister." See "The Forme and Order of the Coronation of Charles II., as it was acted and done at Scoone, January 1, 1651. Aberdeene. Imprinted by James Brown, 1651;" *Phenix* (1707), i. 232—270.

"Regal power, dead and dethroned in England," was now described as reviving

"In Scotland, where they seem to love the lad,
If he'll be more obsequious than his dad."

The satirist proceeds to unmask the royal *Covenanter.*

"But wants he King-craft, to create a plot
To undermine the sycophantic Scot?
No; he'll a Presbyterian brother be
And vow to ratify their hierarchy:
The sins of his Father's House he will bewail,
Mourn and lament under a Scottish veil;
But this religious mock, we all shall see,
Will soon the downfal of their Babel be."

*Mr. Attorney-general* agreed with the last motion.

*Mr. Disbrowe.* I move that the question be put, if the question shall be put.

*Colonel Whitehead.* If I saw all persons in his condition in prison, I should take more notice of it; but when I see Papists in arms, as Colonel Touchett here, at your bar,* and divers other persons in Westminster Hall walking at liberty,† I think what is now offered to you is not against your justice, nor unreasonable.

*Mr. Attorney-general.* I move to have added, "the enemies of the Protector of this Commonwealth."

*Lord Fairfax.* When I engage my estate, I know what I do; but when I engage his honour, I engage what is not in my power.

*Mr. Serjeant Seys.* You ought first, to enquire into the causes of his imprisonment. It may be, you will not require so great a security of him.

*Colonel Fothergil.* I second that motion, and to have a Committee appointed to attend the Council, to know the cause of his imprisonment. It may be less then delinquency.

Resolved, that George Duke of Buckingham, now a prisoner at Windsor Castle, upon his engagement upon his honour at the bar of this House, and upon the engagement of the Lord Fairfax in 20,000*l.* that the said Duke shall peaceably demean himself for the future, and shall not join with or abet, or have any correspondence with any of the enemies of the Lord Protector, and of this Commonwealth, in any the parts beyond the seas, or within this Commonwealth; shall be discharged of his imprisonment and restraint;‡ and that the Governor of Windsor Castle be required to bring the Duke of Buckingham to the bar of this House, on Wednesday next, to engage his honour accordingly.

* See *supra*, pp. 246, 249, *note*.

† See the *Orders*, 1690, vol. ii. p. 438, note §.

‡ "Agreed at length; but not without opposition, even almost to a sense of ingratitude towards the merits of so noble a petitioner." *Goddard MS.*, p. 195. Perhaps the "noble petitioner" so soon to appear in the no longer hopeless cause of Charles Stuart, was already suspected.

Ordered, that the security of 20,000*l.* to be given by the Lord Fairfax, on the behalf of the Duke of Buckingham, be taken in the name of his Highness the Lord Protector.*

The order of the day was read, and it was that an account be given touching the war between Denmark and Sweden.

*Mr. Secretary.* I am here, by order of his Highness, ready to give you that account; and to ripen it, we must look a little back, to the beginning of those troubles, to see where we now are.

It is not amiss, to speak a little in general. 1. Of the parts, princes, and states engaged in that war; and 2. Where the seat of that war is.

You know, the war in those parts first began between Sweden and Poland,† afterwards between Sweden and Denmark;‡ those are the principal parties, but others have since fallen in, by way of aid. Poland is aided by the German Empire, Denmark by Brandenburgh;§ and the States General at sea. Sweden is alone. All these against him, and he against all these.

The seat of the war between Poland and Sweden is Prussia, where are Marienburg, Dantzic, and many other great cities, where the English have had trade. The seat of the other war is Denmark, Zealand, and the territories of the Danish king. There are two sects in Denmark,‖ Holstein

* See *Journals*.

† In 1655. ‡ See vol. ii. p. 359, *note* *.

§ See, on "the Duke of Brandenburgh," *Ibid.* p. 356, *note* †.

‖ Lord Molesworth found in Denmark, "no other religion professed than the Lutheran, except the little reformed French church at Copenhagen, set up by the Queen, and one Popish chapel, at Glucstadt, permitted about ten years ago to a few Popish families in those parts, the first since the Reformation."

His Lordship adds, that "the Calvinist is hated by the priests as much as the Papist; and the reason they give is, because he is against absolute monarchy, and has a resisting principle." See "An Account of Denmark, as it was in 1692," (1738,) pp. 159—161.

Of these Danish priests, Lord Molesworth says (on the Revolution 1660, in favour of the Crown). "The Clergy, who always make sure bargains, were the only gainers in this point; and are still much encouraged by the court, as the instruments that first promoted, and

and Jutland, and considerable sects on the Baltic Sea, by which it will appear that the interest of this nation seems very much concerned in the success of this war. I shall go by steps in it:—

1. Whilst the war was only between Sweden and Poland, there were great hopes that the Swede might have carried on his arms against the Emperor, and the Protestant cause have been thereby much advanced. The success of the Swede in Poland at first gave hopes of this.*

2. The Emperor, then King of Hungary,† sent an army against the Swede in aid of the Pole, which gave Sweden a good ground of war.

3. There was thus a great engagement upon the Protestant party to have assisted this war, and there were great hopes that they would have joined against the Emperor.

4. The Duke of Holstein and the Prince of Transylvania, Protestants and Calvinists,‡ joined with the Swede. He had our good wishes in it. We assisted to our power, and the Protector's interest was engaged.

It is true a treaty with the States General did not succeed. They apprehended jealousies of that work, and of the growing greatness of the King of Sweden, and sent forty sail of ships against the Swede to strengthen Dantzic. The general of

now keep the people in a due temper of slavery; the passive obedience principle riding triumphant in this unhappy kingdom. To the people remained the glory of having forged their own chains, and the advantage of obeying without reserve; a happiness which, I suppose, no Englishman will ever envy them."—*Ibid.* p. 47.

* "His progress at first surprized not only Poland, but alarmed all Europe; for in three months' time he had taken all Prussia, except Dantzic, a great part of Lithuania, the cities of Warsaw, Cracow, and other places in the Greater and Lesser Poland. But his career of prosperity did not long continue. The first consternation being over, the Poles were as ready to fall from him, as they had been to embrace his party." See "An Account of Sweden," as it was in 1688, annexed to Lord Molesworth's "Account of Denmark," (1738,) pp. 286, 287.

† See vol. ii. pp. 355, 356.

‡ The Lutherans were now generally denominated *Protestants*, and the Calvinists, *Reformed*; in France, "Ceux de la religion pretendnë Reformée."

that fleet was to make a treaty of peace between the Swede and Denmark, in which their interest of trade might be secured; but that peace was never ratified.* Afterwards, a renewing the league was projected on all hands; but, in fine, it was concluded only between the Dane and Holland, in order to a former league made in 49.

This league changed the state of affairs, and brought the war upon a new footing. Here was a total embroiling of the Protestant party. The wars by this means were drawn out of the bowels of the Romish party into the bowels of the Protestant, between the Dutch and Sweden. Thus the seat of war was diverted. The Dutch were engaged against the Swede, and the Elector of Brandenburgh drawn in to that side.

His Highness, the late Protector, according to that manner by which he guided all his foreign affairs, kept himself indifferent and equal between his Protestant friends, as an arbitrator. He sent messengers to offer his mediation, in making peace between them. He sent, also, to the United Provinces to dispose them to fall in with our neighbours upon the like occasion, but it did not succeed.

It being more happy for a successful prince to turn his arms into the right channel, than to employ them against friends, to their own destruction, the two kings accepted the mediation. After six months there was a peace concluded, in February 58; so that war was then seemingly ended: the Swede having the advantage. But that war, whilst it lasted, discomposed affairs so much, as they could never be composed again.

The peace thus made did not last. There fell out other difficulties, and another division. The Prince of Transylvania was forced to quit his interest with the Swede, and is since made useless.

The Elector of Brandenburgh was disposed first to a

* Quitting Poland, "Charles Gustavus soon hastened to Denmark, which he soon reduced to the necessity of buying peace at the price of the provinces of Schoven, Halland, and Bleaking." The war "broke out again in a few months." See "Account of Denmark," p. 287.

neutrality, and is since engaged farther with the Emperor. His Highness sent to him, to advise in this affair, and for a time suspended his resolution; and he sent ambassadors to the Swede, to prosecute a league, but they returned *re infectâ*. Then they made a league, offensive and defensive, with the Emperor.

Besides all this, new differences did arise between the Dane and the Swede, about the peace made in February 58; and in August last, a new war broke out between these two kings. I do not yet know the justice nor the grounds of it, but all their neighbours found themselves concerned in this difference, and, as their interest served, did mingle themselves with the interest on one side or other.

The Emperor, Brandenburgh, and the Pole, joined their forces, and marched to the assistance of the Dane into Holstein and Jutland; all commanded by Brandenburgh as general.

The Emperor had 8000 foot, and 4000 horse. Brandenburgh ———* foot, and 6000 horse.

They marched to the coast of the Baltic Sea, to be transported for Zealand, to raise the siege before Copenhagen, retake Cronenburgh Castle, which commanded Copenhagen, and recover what was lost there.

The States-general, they thought themselves bound, and according to their treaty, sent aid to the King of Denmark.

There were thirty or forty men of war, with all manner of provision, besides 4000 foot, with directions to relieve Copenhagen, to favour the transporting of Brandenburgh, and to fight the Swede's fleet, which was all done accordingly. The Dutch fleet also engaged in the Sound.† I shall not mention what happened between the fleets.

* Blank in the MS.

† "The passage or *strait* called the *Sound* or *Ore-Sound*, which has so great a reputation in the northern parts of the world, lies between the island of Zealand, and the firm land of Schonen. On Denmark side, where it is narrowest, stands the town of Elsinore, and the strong fortress of Cronenburgh, near which is a tolerable good road for ships.

3. His Highness considered that the Emperor was likely to arrive at the design of the House of Austria, to command the Baltic, and the eastern seas, as the Spaniard already hath the command of the western seas. Thus, they would command all the trade of the world. Of this the Dutch were so sensible before, as they engaged the Swede to come to hinder the progress of the Emperor, who is now fairer in hopes of it than ever he was in the world, they having greater possession there than formerly, as two or three principal places in Holstein, by the delivery of Denmark, are already garrisoned by the Emperor's forces.

And I think the King of Denmark is in more danger from those that are allied with him, than from his open enemies.

4. He considered that when the Emperor had done his business there, he and his confederates would next pour themselves into Flanders, and from thence hither into this Commonwealth, where they intend to bring in another government, when they are ready for it. Such counsels, we know, are on foot, *de facto*, already.

5. The great danger of overthrowing the Protestant interest, in general, which we have so much reason to preserve and promote.

His Highness, considering these mischiefs, thought himself concerned to obviate them as far as he could. We are yet in friendship with all these princes, and have no enmity with the Emperor; nor would his Highness have it otherwise. He therefore thought fit to interpose upon the account of amity.

You should make it your first step to endeavour to reconcile those two fighting kings, thinking it to be our interest rather to preserve both, than to suffer either to be destroyed; and that France and you would join to take off the Dutch

For Christ they combat, till he reign o'er all
On Sion's mount, and Babel's turrets fall.
Yes, Belgians! Heaven's high providence discern,
And quick to peace and piety return,
Or ere the Almighty's well-earn'd wrath ye prove,
And perish, hopeless of the bliss above.

and Brandenburgh, and if possible to reconcile the Pole and Sweden.

To promote the success of this mediation, and bring all parties to a reconciliation, not excluding the House of Austria, too, his Highness thought fit and meet to send a fleet into those parts of twenty ships, to the intent to make a peace between the two kings, and of this he acquainted the States General.

The Dutch sent twelve sail of ships, and 4000 men, to the Dane. His Highness desired them not to send farther succours. They said they desired to reconcile the two kings, and declared that it was not to engage in hostility with Sweden; but for the assistance of their ally, the King of Denmark. Whereupon they unshipped their men.

It is true, our fleet did not proceed by reason of the unseasonable frost, but they had this advantage, as that things do stand now as fairly as they stood in October last. Thus far as to what is past. Now as to what is before you.

Spring is a time of action. There are great preparations for it on all hands. The States General endeavour a peace, but think it not safe to trust the success to a treaty barely, but will have a good navy to attend it. They have, therefore, resolved to set forth one hundred sail of men-of-war, besides the continuation of thirty ships in the Sound, already, with Opdam.

They have capital ships, fifty-eight* more, from forty guns to ———,† twenty frigates, ten fire-ships, as many advisers. Upon these ships they have, or intend to ship 18,000 men.

They are building of eighteen ships more, and three of one hundred and thirty feet long, all which will be ready in a short time. They carry 4000 foot soldiers more, to the assistance of the King of Denmark, besides furnishing fifteen or sixteen ships of the King of Denmark's own, which are very strong.

* "Here was a particular how every ship was raised, and how many every city sent forth. Rotterdam 13, Amsterdam 18, Holland 14, Friesland 13." MS. † Blank in the MS.

I AM V. BORED WITH BURTON

So as, the truth is, the Dutch manage this business with a great deal of vigour and resolution, laying great taxes for the carrying on this work, which they never do but upon great concernments for the country.

His Highness, in these affairs, thinks our concernment as great as the Dutch, and that the same reasons hold in every thing with us; our nation being, indeed, as much or more concerned in that business than theirs; for they are upon the continent, and we, an island.

He, therefore, thinks, that unless he hath considerable fleets, as well as the Dutch, his bare interposition as to peace, will signify little or nothing.

When neighbours do prepare in such extraordinary ways and proportions, we, in prudence, must do so too.

Therefore, in order to that, and to keep peace between our neighbours, his Highness hath thought fit to prepare ships, in order to these affairs and emergencies. The preparation is well onward, only he thought it fit and necessary that this House should be acquainted with it, that we, knowing of it, may advise as we shall think fit in this case.*

*Altum silentium* for a good while.

*Sir Henry Vane.* Upon this great and weighty information, the consequence is much to be thought upon in your wisdom. I desire in one particular a little farther light, it having been but shortly touched upon, and it would

* "According to the order of this House, made on Thursday last, Mr. Secretary Thurloe made a narrative, and gave the House an account of the state of the war, and of the affairs of the Kings of Sweden and Denmark, in relation to the Baltic Sea, and to the command of the Sound; and how far, and in what manner, as well his late Highness the Lord Protector deceased, as also his now Highness the Lord Protector, had severally interested themselves in their respective differences, by way of mediation. He farther gave the House an account of the shipping and forces of the States General of the United Provinces now in the Sound; and what farther preparations, as he is informed, they are now making; and that his now Highness and his Council had directed such shipping and forces to be prepared here, as he apprehends may be for the security of this Commonwealth in these times of so great action." *Journals.*

give much satisfaction, in reference to what is to be thought upon by the House. That is, concerning the second war, which the Swede entered upon with the Dane after the mediation. We understand not where the fault of that breach lay, which began that second war. I would that we understood how the peace came so suddenly to be broken off, and Copenhagen besieged.*

*Mr. Secretary.* I did omit to say somewhat, which if I had said, this noble person would have had no reason to ask for that satisfaction.

What the ground of raising that second war was, I am not well able to state; for though we have heard what they have both said, yet his Highness is still in the dark. But, as to the matter in hand, his meaning is, not to espouse either interest in the quarrel, just or not just, or to meddle with the state of that war, in which we have no concern, but only in relation to the good of this nation and of our trade. His Highness thinks himself concerned to look to the state and interest of ourselves, and that we should not stand still to look on, while two princes are thus fighting, and drawing on the engagement of all their neighbours on either hand.

*Mr. Trevor.* "The considerations of war and peace are fit considerations for this House." I think there will be little debate of what has been in his Highness's thoughts, to make that preparation. I hope nobody will except against that. And if you shall desire his Highness to take care of the interest of the nation in this affair, in this great juncture, it will be but what it is fit for you to do. I move that it be referred to his Highness.

*Mr. Noell.* It is not the interest of states to look into the cause of war, but their own concern in it. I can say nothing in this case as to matter of state. I can only speak to matter of fact.

* In the summer of 1658, "The King of Sweden unexpectedly landed an army in Zealand, where he took the castle of Cronenburgh, at the entrance of the Sound; but had not the like success at Copenhagen, which was besieged and stormed in vain." See "Sweden in 1688," p. 287.

I think the interest of the nation was never more concerned than now. All the Protestant interest here, all the Protestant interest in the world, lies now at stake. If Sweden were now overrun, you might then as well conclude all the Protestants shall be overrun; and when you are not able to protect them, I doubt their interest will be very low.

But I shall only speak to trade. If the interest of trade come into the hands of those that bid fair for it; if they get it, you need build no ships. If the power of the Sound were once in the hands of those that now look for it, that is, the Dutch, you will be so far from protecting your merchants, that they will serve you as we served the King of France in Queen Elizabeth's time. We forbade him to build ships in his harbours, because we would take care to keep the seas ourselves.*

They have already forbid us going into Bantam,† because they say it is an enemy to them; and in time we shall not be able to trade, especially there. Nay, they will forbid all the trade of England.

I know not what you can do for timber, for ammunition, for ships, and for other common uses, if you shall be forbid that trade.‡ When the war between you and Holland was, you were kept from that. You shall have but what they will give you.

Consider generally what you will do in it. I know what will be the consequence of it, as well as I know the sun is in the meridian. I have no end in it. A day, an hour, is precious in a matter of this nature. It will be that which will strengthen you, and make you considerable in the world. Put it into such hands as will answer your ends.

I move to have the management of this business committed to the Protector.

* I cannot find in *Camden*, or elsewhere, the historical authority for this extraordinary prohibition.

† "A seaport town on the north-west part of the Island of Java, trading with merchants of all nations, before the Dutch obtained the exclusive trade." *Crutwell.*

‡ Through the Sound.

*Mr. Neville.* The account is very satisfactory and accurate. Here hath been something offered of interest of state, of trade, and of religion. For this last it is certain, that the Protestant cause or the Protestant religion are different things. When a war is begun upon account that the Protestant religion is in persecution, as in France and Spain formerly, there is a great concernment, and it ought to move us before all things else. There is no such war now, as I take it.

But I call that a Protestant interest or cause, when several particulars agree and league together for maintaining their respective dominions.

As to this quarrel, I can see nothing of religion or Protestant religion. There are Calvinists and Lutherans on both sides. Brandenburgh, Holland, Denmark, are all Protestants; and as good, if not better than the Swede;*

* The Dutch were certainly more tolerant. See vol. i. p. 100, *note.* In Sweden, during this seventeenth century, "A Committee chosen out of the several bodies of the estates, spent some years" in revising "the ancient ecclesiastical laws and canons." The following "new canons" enforced by royal authority, were among the precious results of their pious and learned lucubrations:—

"If any Swedish subject change his religion, he shall be banished the kingdom, and lose all right of inheritance, both for himself and his descendants.

"If any continue excommunicated above a year, he shall be imprisoned a month with bread and water, and then banished.

"If any bring into the country teachers of another religion, he shall be fined and banished.

"Foreign ministers shall enjoy the free exercise of their religion, only for themselves and families.

"Strangers of a different religion shall have no public exercise of it; and their children shall be baptized by Lutheran ministers, and educated in that religion; otherwise they shall not have the privileges of Swedish subjects." See "Sweden in 1688," pp. 228, 229.

The Long Parliament, in 1642, had betrayed an intolerance quite in the spirit of the latter canon. See vol. ii. p. 151, *note.* Charles I. in one of his last communications to the Parliament, (October 1648,) proposed to sanction their Protestant partiality and injustice, by con-

and therefore I cannot see how the Protestant religion is particularly concerned in this.

England, indeed, cannot subsist without trade, and interests of state may, peradventure, far engage us. I know not how it comes, unless it is because of your interest against Spain, that the Emperor is in alliance with Spain. It is told you, the interest of the Baltic Sea is material to your trade. Therefore, our question will be:—

How far forth our engaging now, by intermeddling with the business of the Sound, can advance our interest, either for the strength or for the trade of this nation? And it seems to me to be for our service to preserve it in Denmark's hands, where it hath been this long time; your friend's, whose right it is, and where it was and will be well enough, if we please ourselves. The King of Denmark hath but the door into the Sound. But what if we should help to put it into the hands of Sweden, that hath both the door and house too? Consider whether thus to trust them be for your service.

Your recommending it, may include peace or war; to decree which is our work. The management, indeed, may be elsewhere, but we must well consider the inconveniences we may be engaged in, if we undertake a war, and therefore you must resolve what you mean to do by setting forth our ships. It is one thing to maintain a fleet at home, another thing to maintain a war abroad. Contending for that trade, we are like two rivals, that go a wooing to one woman.

It grieves my heart to think what hath been the event of the breaking of the peace with Spain.* We had a war with

senting "to Acts for the better discovery and conviction of Popish recusants, and education of their children in the Protestant religion." *Whitlock*, p. 340.

* See *supra*, p. 314, *note**. "By Cromwell's war with Spain," says *Coke*, "the Dutch, who, since the peace of Munster, 1648, became competitors with the English in the Spanish trade, are now sole proprietors of it, as much to their enriching, as our impoverishing." *Detection*, (1697,) p. 387.

"Cromwell joined with France against Spain," says Lord Boling-

Holland. I am ashamed to say upon what terms the peace was made.

broke, "and though he got Jamaica and Dunkirk, he drove the Spaniards into a necessity of making a peace with France, that has disturbed the peace of the world almost fourscore years, and the consequences of which have well nigh beggared in our times, the nation he enslaved in his. There is a tradition, I have heard it from persons who lived in those days, and I believe it came from Thurloe, that Cromwell was in treaty with Spain, and ready to turn his arms against France when he died. If this fact was certain, as little as I honour his memory, I should have some regret that he died so soon." See "Letters on the Study and Use of History," written in 1735, (1752,) i. 258, 259.

Dr. Harris has adduced the principal authorities on the merits of the Protector's foreign policy. See *Lives*, (1814,) iii. 362—377.

To justify the war with Spain, Milton wrote, officially, a Latin manifesto, which has been translated. See "Critical Life of Oliver Cromwell," (1747,) pp. 200—203.

A biographer of the French minister thus describes how Mazarine, in 1654, had seriously apprehended, and laboured to interrupt, the relations of amity between Spain and England:—

"Les pratiques des Espagnols en Angleterre luy tenoient fort au cœur, voiant qu'ils faisoient tout ce qui leur estoit possible, pour embarquer le Protecteur Cromüel dans une ligue offensive et defensive avec eux.

"Il s'agissoit donc seulement de tourner les Anglois contre l'Espagne; en leur faisant des offres plus avantageuses, que n'estoient celles par où les Espagnols pretendoient les tourner contre la France. La chose n'estoit pas sans difficulté, car les Anglois et les François ont de tout tems de l'antipathie les uns pour les autres, et les derniers démeles qu'ils venoient d'avoir, sembloient l'avoir accruë. D'ailleurs le Protecteur estoit un homme plein de luy-même, infiniment ambitieux, et qui vouloit se signaler par quelque chose d'éclatant: et par cette raison il ne falloit pas que les offres qu'on luy feroit fussent au dessous de sa vanité ny moindres que ses vastes pretensions.

"Après avoir examiné toutes ces choses, le Cardinal donna ses instructions au President de Bourdeaux, Ambassadeur de France à Londres.

"Il fut receu tres-honnorablement du Protecteur, avec lequel il entreprit une tres-importante negotiation. C'estoit celle d'une ligue offensive et defensive entre la France et la Grand-Bretagne, dans le temps que les Espagnols s'efforçoient d'en arrester une semblable entre le Roy Catholique et le Protecteur. Dom Alonso de Cardenas estant venu pour ce sujet à Londres comme Ambassadeur Extraordinaire, et le Marquis de Leide après luy. On verra dans la suite comment le Car-

I cannot give a rational account of it, unless it were to establish the Government over us, which was set after on foot, so that England was conquered, instead of conquering Holland. For if the Hollander had come into conditions with us, as was fairly offered,* that Government would never have expected any place in this nation: but the abrupt war with

dinal Mazarin rompit toutes les mesures des Espagnols en cette affaire, pour mettre, comme il fit, les Anglois de son costé; et ce fut un des coups les plus merveilleux de sa politique." See "Histoire du Ministère du Cardinal Mazarin," (1672,) ii. 170, 172, 173, 290, 291.

"Mazarine, a man of large and subtle wit," says Mr. Bethel, "apprehending the greatness of England at that time, which was then dreadful to the world, and the vast advantages France would have, in pulling down, by their help, of Spain, granted him not only any thing for the present that he demanded, but disregarded also even his parties making their boasts of the awe he had him under. And though nothing is more ordinary than to hear men brag how Oliver vapoured over France, I do esteem Mazarine's complying with him, for his own ends, to be the chief piece of all his ministry." *World's Mistake*, p. 42.

"Mazarine was too wise not to know what he did," says Charles Davenant, "and not to see that no punctilio of honour was to come in competition with so great a benefit as the ruin of the Spanish monarchy would produce to France. He suffered Cromwell to enjoy the empty glory, while he reaped the solid profit; and perhaps it may be reckoned the master-stroke of all his ministry; for like the lion he crouched, but it was to leap more conveniently upon his prey." *Essays*, (1701,) p. 17.

* See *supra*, pp. 111, 112. "Cromwell not only remitted," says *Cake*, "the 300,000*l.*, which the Dutch proffered the *Rump*, for the damages the English sustained by the war, (see *Stubbe*, p. 112,) but left out the coalition, the revenue to be annually paid to the English for liberty to fish in the British seas, the sovereignty of the seas, except the flag, security from the Dutch not to molest the English in time to come, and to have their ships searched in passing through the British seas, and not to set out any greater than such a number of ships of war, without giving an account to the English State of the reason, and also that the English should have a free trade up the Scheld." *Detection*, (1697,) p. 383.

While this peace dissatisfied the English, especially the republicans, as disadvantageous, it was disapproved by the Continental powers on a very different account. "Elle allarme les Couronnes," says the biographer I have just now quoted.

"Cette paix ne plût pas aux François, et moins encore aux Espag-

Spain, and the dishonourable peace with the Dutch,* gave opportunity to what after followed. I am afraid, if you engage now against Holland, they will be too hard for you. We are exhausted for money. It is not for a *hierarchy* to maintain that war.

If we put the Sound into the Swede's hand, we must, for ever after, trade but at his courtesy; for he will have not only all the dominion of the Sound, but all the Baltic in his own hands, and the territories adjoining to it in his power. Thus Sweden is able to maintain that trade himself. Denmark is not able to maintain that trade himself. I know not that it is fit to trust Sweden with it. Why may we not assist Denmark?

I suppose the danger from the Emperor is not considerable. He is not like to sit down by the Sound. His dominions lie far off. He hath enough to do to defend himself against the Turk; and though he hath sent forces into Flanders, yet I presume you may have terms of security, at least of neutrality from him.

Besides all this, I apprehend it will be no easy matter to get monies to carry on this war. I would have it our first

nois: car il estoit de l'interest des deux Couronnes, que ces deux republiques, qui leur estoient contraires et de maximes, et de mœurs, et de religion, et qui faisoient tous leurs efforts pour leur nuire en toutes rencontres, ne vinssent pas ainsi à se fortifier en s'unissant." *Ministère du Mazarin*, ii. 285.

* Concluded "at Westminster, April 5, 1654." The 30th Article provides, "that Commissioners shall be named on both sides, to examine and distinguish all those losses and injuries, in the year 1611; and after, to the 18th of May 1652, according to the English style, as well in the East Indies, as in Greenland, Muscovy, Brazil, or wherever else either party complains of having suffered them from the other."

Before these Commissioners were exhibited the mutual complaints of the English and Dutch East India Companies. The former allege, as their 10th article, "Feb. 20th, 1622. At the same time when the Dutch Company committed that inhuman massacre of our countrymen at Amboina, [see *supra*, p. 380, *note* *] they took away 300,58 reals of eight from the English." On this account, 3615*l.* was awarded in various sums to the representatives of the English sufferers. See "A General Collection of Treaties," (1732,) pp. 67, 78, 123, 124, 134, 135. See also, Dr. Harris's *Lives*, (1814,) iii. 354—358.

business, that by peace we may remain umpire, rather than engage upon such a hard service in a war. Therefore, I shall move for a further day to be appointed, that gentlemen may consider of this; that we bethink ourselves what to offer in this business; unless you think fit, now, to send ambassadors for a mediation.

*Colonel Birch.* I cannot blame those gentlemen that are unwilling to hear me, knowing my unfitness to contribute to this great debate.

I must differ from the gentleman that spoke last. The Protestant cause is deeply concerned in this business, and so is this Commonwealth in particular. If the Emperor get footing in the Baltic Sea, it will concern the Protestant cause. If those conjoined forces should get a footing in those parts, the King of Spain would have as great a strength in the south as he hath already in the west.

It will undo us, either to put it off to another day, or to send an ambassador. The effect is plain, if we engage not in this way as it is offered.

It will be difficult into what hands to put the Sound. The King of Denmark—he is so low, and so much in the power of the Dutch, as that it will not be for your service to put it into the hands of the Danes. If it be in the hands of him that hath the door and the house too, that may be dangerous; but Sweden can never be able to maintain either door or house without your assistance.

Though it cost you never so dear, I would contribute my all. This business may beget us a long peace, though a great charge follow in the settlement. It looks to me like a way open to a great work. Not that I am for fighting, but for treating with sword in hand, and to do it upon the place. Upon the whole, I think it best to refer it wholly to the Protector back again, to take present care of the Sound, and to send such force as may enter the Baltic Sea.

*Mr. Lloyd.* This concerns not only our well-being, but our very being. But by this care, no materials can you have for shipping. We are islanders, and our life and soul is traffic. Your cloth trade will be lost.

Denmark borrowed not long since a great sum of money of the Hollanders, and gave them the Sound for security, and they had it many years. They that know affairs well in those parts, say they have security of it again.

I will mind you of the business of Amboyna. Nothing done by treaty.* A sword in your hand makes your treaty strong. That was the fault of King James.†

Take time by the forelock. A wise man sees things afar off. This is the spring, defer it not. The Hollanders now furnish our enemies of Spain with shipping, and better an open than a close enemy. Our war with Spain has destroyed all our trade. This we have upon us already. We cannot long hold in this way.

For my part I would no sooner trust Sweden than the Dane; but I hope you will secure your own interest. The Swede cannot keep it without your ships, no more than the Dane can do without Holland. Make good conditions upon the place. Trust not compliment. I shall not speak of the interest of religion; but this nation has ever been looked upon as the head of the Protestant interest. I would have you take speedy care of the Sound.

*Mr. Scot.* You are not yet come to the *bellum religionis*, but your cards are ill sorted at present, if it be so. I am sorry to hear of combinations, against, and amongst Protestants. Here is one Protestant against two or three, and the Brandenburgh is more of that religion than the Swede; though I like not his company. Therefore it cannot be *bellum religiosum*. Nor do I understand it to be *bellum mercatorium*, but it concerns you to understand where your interest lies.

Whether the King of Sweden, or the House of Austria have the Sound, it is to me, as to that, indifferent. Our in-

* See *supra*, p. 391, *ad fin.* Yet the order for compensation was dated August 30, 1654.

† It is uncertain whether this speaker refer to the pusillanimity generally discovered by James in his intercourse with foreign states, or only to his extraordinary conduct in the affair of Amboyna. See Coke's *Detection*, (1697,) i. 120, 121; Lord Clarendon's *History*, (1712,) iii. 489; Dr. Harris's *Lives*, (1814,) i. 198—201.

terest certainly lies in the Danish hands, which, for aught I hear, is no more than what the Dutch intend. I am not for sending ambassadors, neither, without a strength to back them. Ambassadors, to be waited upon with a good navy, may do some good; but I think you are not yet so forward, at least not to put the power of war into any man's hands, or to recommend it to him.

There is a game, it seems, a playing, and stakes to be kept, abroad; but we have a game, and of greater concernment to us, that is now playing at home. The militia at home is first to be settled. Now you have recommitted it, do it deliberately, *ex consulto*. We must not make too many steps at once. Let us have time to consider what is to be done. I do not think that resolutions of this nature should be too precipitate. If it can bear six months, before a Parliament be called, it may well bear some hours consideration, that we may deliberate. You should be made somewhat more than purse-bearers, and to tell the Protector, "If you will make the war, we will find purses." Henry acquainted the Parliament before war with France;* always before he went to try his title there.

Are the Commons so little concerned, as not to have so much as two of their members of the council?†

I do think this business will at length resolve into a war with Holland. You know who it was, that, when time was, made war with Spain, and peace with Holland.‡ How destructive the peace hath been, lately made, and the war also, you yourselves can best judge. I am afraid to say it. It is now come to be your unhappiness, that you must begin that war again, where it was left by us in 1653. I believe it is an irreconcileable quarrel between us. We are rivals for the fairest mistress in all Christendom, trade. You need not be their enemies, directly or designedly. They began the quarrel for a flag.§

* See *supra*, pp. 313, 314, *note* ‡; vol. ii. p. 48, *note*.

† They appear to have consisted chiefly of Members of the Other House. Secretary Thurloe was of course one of them.

‡ See *supra*, pp. 390, 391.

§ Referring, probably, to the commencement of hostilities in 1652. See *supra*, p. 380, *note* *.

I am of opinion, that you should make preparations, previously, in order to that design. If they get the Sound, that is cause of quarrel. If they get it not, will they lay down their ships? I think, if peace be made with Sweden, they will turn upon you, and never leave you until they be masters over you.

I would have you not to delay for a minute, but command the Commissioners of the Army and Navy to go forward vigorously with the business, as it doth by your direction; but leave not any body to sweep the stakes. Keep yourself in your chair as long as you can, and be you yourself the great disposer of peace and war. This will otherwise determine the dispute of the militia.

*Mr. Knightley.* What necessity requires, must be done. What honour and safety require, must be done; but, I doubt, in referring this business to the single person, you determine the controversy. The Dutch are heavy enemies, and covetous.

I would have it referred back to his Highness and Council to manage the business, because of secrecy, with a salvo, not to prejudice us in the great business of the militia; and that it may not extend to give up the liberties of the people, nor be brought into precedent to that purpose.

*Mr. Bulkeley.* I understand not, that by sending this fleet you are entering into a war; but, because your neighbours make such transcendant preparations, yours ought to be suitable to theirs: not to make this or that nation your enemies, but to be there to make terms for yourselves.

They deserve the esteem and respect of this House, that have made this preparation. If it were to do now, it would be too late.

I cannot say that this will at all touch the great dispute of the militia, which I suppose will mostly be contended for.

I would have it speedily recommended to the care of such persons as may stand by, and make terms for yourselves. I question whether it be not prudential to interpose. It is not a making peace or war, but to assist what is twisted in your interest.

The Emperor would resign Hungary to have the Baltic, as more consistent with the interest of the House of Austria. What Protestant soever joins with Austria, must expect what Ulysses had from Polyphemus.

I second Mr. Knightley's motion. I would not have the House caught in any thing.

*Sir Arthur Haslerigge.* This concerns Englishmen's blood, and Englishmen's flesh and purse. It is offered that we must send a fleet to stand by, and, if the Dutch fight on one side to assist Denmark, we must fight on the other against the Dutch.

We were kept out, when we wanted war, at Jamaica, and see what became of it. It hath been told us we have not lost all our men, nor all our money; we have a good tenure in Flanders. War with Flanders cost 20,000 Englishmen's blood; more precious, Sir, than many such tenures: nothing so precious. It is plain you will bring on a war with Holland.

How will your army be paid? Many millions are spent, and many millions will be required to carry on this business.

If you engage suddenly in a war with Holland, I think all England will be lost. When our forces are gone to the Sound, an army may be landed here, and Charles Stuart*

* On his coronation as King of Scots, were "Printed, London 1651, by I. L. Philalethes," on a single leaf:

"Old Sayings and Predictions Verified and Fulfilled touching the young King of Scotland and his gued subjects." (quoted *supra*, p. 374.)

"*Jockie.* I, Jockie, turne the stone of all your plots,
For none turne faster than the turne-coat Scots.
"*Presbyter.* We for our ends did make thee king, be sure,
Not to rule us; we will not that endure.
"*King.* You deep dissemblers, I know what you doe,
And, for revenge's sake, I will dissemble too."

Then over a characteristic print is the following title:

"The Scots holding their young Kinge's Nose to the Grinstone."

Over Jockie, who is turner, are these lines:—

"Come to the grinstone, Charles, 'tis now too late
To recollect 'tis Presbyterian fate."

The Presbyter, bearded, and wearing the cloak and the then fashion-

to head them. I would have time to consider of this business.

The business of the navy is already under consideration, and so likewise that of the army beyond the seas. By them you will understand all things.

Let us not engage too suddenly, before it be well weighed and considered. I move for a farther time to consider, and that a business so destructive should not suddenly be resolved upon.

*Colonel White.* It was not reported to you by way of a war, but by way of a wise foresight. The Dutch go not to fight, but only to mediate for their interest. Why may not you do so for yours?

I would have you give directions to your Commissioners of the Army and Navy, to go on with the preparations; but as to the conduct and management of the design, that may be a farther consideration.

It is here represented to you as if you had the power of making peace and war. I would have you name no persons nor places, but only move that the preparations may go on, vigorously, in order to your trade in the Baltic Sea.

*Colonel Clark.* His Highness and his Council gave orders to the Commissioners to provide a fleet for such purposes as they should afterward employ them.

This affair stands you highly upon, to take care of this great business. What hath been offered, hath been exceedingly well for the occasion. I stand not upon the justice of

able skull-cap, says, by a label proceeding from his mouth, "Stoop, Charles!" while he holds to a grinstone the face of the royally-robed youth. Over the King are these lines:—

"You Covinant pretenders, must I bee
The subject of youer Tradgie-Comedie!"

"I will conclude," says I. L. "with an old prophecy of a Jesuit in Henry VII.'s time, of all the Kings and Queens that should succeed in England; thus, *Mars, Puer, Alecto, Virgo, Vulpes, Leo, Nullus.* The English of it is this: *Mars,* the god of war, Henry VIII.; *Puer,* a boy, Edward VI.; *Alecto,* a fury, Queen Mary; *Virgo,* a maiden, Queen Elizabeth; *Vulpes,* a fox, King James; *Leo,* a lion, King Charles; *Nullus,* none."

the war, or the injustice of it. You have a vigilant and curious neighbour, that looks on all your proceedings abroad, especially at sea. It will be your wisdom to prevent those dangers which may happen to you. The Sound, that is now at stake, is the gate of your trade, and will you see it cast out and given away, and not look about you, till too late?

If you give them this opportunity of getting the Sound, they will be too strong for you. Yourselves will be the next morsel. Let them get this step, and they get all.

The great charge is often objected; but it is considerable whether it will not be a greater charge hereafter to recover what you may now secure. All your naval materials come thence.

I know not but the Dutch navy may be out within this week. They have wrought night and day. Is it for nothing? If they get the mastery in this, they will easily have it in your shipping, or any other matter.

There hath been as vigorous a preparation of the fleet as may be. If you countenance it, it may be out as soon as theirs; but if you shall do otherwise, it will be discouraged. Therefore, I think some seasonable resolution should be, concerning it. I pray, think it worthy of a speedy resolution. I have heard that there are the greatest endeavours to put some obstruction in this business. Dutch and Dane are not wanting to lay stumbling-blocks. If they can give you the go-by in it, the issue is obvious. They will have advantage enough over you.

Some do infer that a war must follow. I am not discouraged at it, neither do I think that England is undone in case it should so happen; but I do not think a war will necessarily follow. Yet, if the Dutch will fight with you, it is not for your honour to sit still. If they will begin, you will defend.

If you do send a fleet now, you will be able to balance your interests, at least you will have a share in what happens. I would not have it fall into the Dutch hands. Every member ought to be tender how he lets any such thing fall as discouragement. I would not have the Sound divided, and you not have a share. If the Dutch do go with one hundred sail, and

dispossess the Brandenburgh, and beat the Swede, where will the Sound fall? Who else can have it but the Hollander, if you interpose not?

Referring this to his Highness and council, will not determine the question about the militia.

*Mr. Onslow.* I shall begin where that gentleman ended, that this business deserves a vigorous prosecution. But it being a business *primæ impressionis*, you cannot too soberly consider it; nor can you delay it long. Yet the delay of a day or two can make no great obstruction; and I know not what motion drives on this great wheel now, so much faster than it was wont to be.

It is said, preparations are ready. It is fit, first, the whole state of the matter should be farther represented to this House. The interest of religion is here much divided. I am not prepared to give my vote. I am not so quick as other men. Hear Hear!

The great stress is laid upon our danger from the Hollander. The person who opened the matter did not so open it. He laid it upon the German Emperor, and his design for getting possession of the Baltic Sea; and if so, there is nothing of difference between us and the Dutch. Besides, I have observed that it is not yet directly insisted upon that we shall engage at all. His Highness and the Council have declined that hitherto. It is not Christian, when our neighbour's house is on fire, to run to partake of the spoil.

I therefore move, to adjourn this debate till Wednesday or Thursday morning next.

*Mr. Raleigh.** I am for a speedy dispatch of this business. He that is master of the Sound, is master of all the trade of Europe. I conceive not that we are about to engage in a war: but the Dane cannot keep the Sound without help of the Hollander, and if the Hollander hath it, the House of Austria shall have it: and if the Swede hath it, he cannot keep it without us. By this we may guess how far our in-

* For the remainder of this day's debate, I am entirely indebted to the *Goddard MS.*, pp. 209—214.

terest is concerned in it. I would have you resolve, before you rise, to refer it back to his Highness.

*Lord Lambert.* I am for proceeding vigorously in this business. I will not judge whether this be a Protestant war or no, but that which concerns you is a war which interests yourselves. The interest of England is, or ought to be, the great care in this business.

How we shall manage this affair, that the Sound may be in such hands as may best suit with our interest, is difficult to judge.

Some think it most dangerous to fall into the Dutch hands, others to the Emperor's, others to the Swede: and indeed, for my part, I am of opinion it is best in his hands that, it seems, is least able to keep it.

The Dutch are the only people that are able to engage us at sea, and to cope with us in trade; and if it be taken for granted that they must have the Sound, certainly it will very much concern our trade.

For the Swede, if he be master at land, he will soon be master at sea, and not suffer his commodities to come down to the coast; and if he continues his conquests, he will grow very considerable. Besides, his navigation and his trade begin of late to grow very great. We have a wolf by the ears. Sweden is likely to be as potent in navigation as Holland.

If Denmark be not already too much in the Dutch bottom, I think a friendly assistance would do well there.

That our fleet is in good forwardness, I am very glad; but designs of this kind are not in one fleet, but in reserves. Therefore, I think it requisite you should countenance it all along.

Look principally, upon the interest at home. Stand by, and fall on the victors. Have a main regard to that interest of yours, the militia.

Engage some particulars from yourselves to take care of this business.

I am of opinion you should declare, that it is the interest of England and of the world, that the power of the Sound

should not be put into any one hand whatever, without naming the Dutch or any other particular.

*Sir Henry Vane.* I am yet perplexed in my thoughts. Therefore, I shall only mind you of the old order in Parliament. Upon such reports as this, or letters, or messages from the King, we never looked upon them the same day; but had a jealousy and suspicion of some court-design in them, to engage us in such rash designs, before we knew where we were.

I do not say there is any such thing now; but it looks like some such thing. I told you, at first, that I feared matter of money was our chief concern. I fear still, the same thing is now intended, in that we must not have leave to sleep so much as one night upon it. We must give a million of money by a side-wind. Sure, we must find out this money, and yet we must not sleep upon it. I dare not think of the sad consequence of this, unless your wisdoms will disintricate you in it.

It hath been the great wisdom of princes, that heretofore have had to do with the House of Commons, who see not at first the sad consequences of things, to make a war; and then presently to make a peace, and then put up the money that was given them towards the pretended war. I do not say such things are now; but I desire we may sleep upon this, at least forty-eight hours.

I perceive many things are taken for granted, of which I am not yet fully satisfied.

1. That the King of Denmark must be dispossessed.

2. That we must fit ourselves to take possession of some part of it, like birds of prey.

3. That Holland is your enemy already.

If it be our interest that Sweden should be emperor of the Baltic Seas, I should be very glad to understand how?

France may, perhaps, be willing to engage us in this quarrel; and when we are engaged, he will be as fit to bridge over somebody else * as any other.

* Charles Stuart was, no doubt, here designed.

I move for Thursday or Friday.

*Mr. Bampfield.* I agree that it is one of the greatest matters in debate, since this assembly met, and may carry with it the greatest good or the greatest evil.

I do remember when that of the war with Spain was offered to us, without any consideration we approved it;* but the consequences of that war have been the decay of our trade in all parts; and in this little war, we have not only lost our trade,† but they have set up our manufactures; and in three years, we have lost 1500 ships.

And whether this expedition will be for our good or hurt I will not dispute; but only advise you to consider well before you enter into this war.

It is certain, that before this war, Elsineur and Elsenburgh, belonged to Denmark. Since the first war, one belonged to the Dane, the other to the Swede;‡ but now they are both the Swede's.

The Swedes, indeed, are Protestants, but the Danes are Calvinists; so I think the Protestant cause not concerned.

To declare that these two shall not be in the hands of one, is to declare against the Swede.

If we forward the preparations, what do we say other than that we will defray the charge of these preparations, which are very chargeable? If we approve it so far, and that it is more than probable that it will produce a war with Holland; whilst we go about to engage in that, how shall we secure our interest?

The very being of the Hollander is founded upon the rivers of some of the Spanish monarchy, therefore, their interest will lead them always against it; and though their affairs lead them, at present, to unite with some members of that family, yet if we shall engage in a war with Holland, so the Protestant cause can be safe, where is there one foot of Protestant ground that will be at peace? Suppose also, that

* See vol. i. p. 40.

† This speaker was member for Exeter, where there was a considerable manufacture of woollen stuffs for Spain and Portugal.

‡ See *supra*, pp. 379, 385, *notes*.

marriage and consequential peace should hold between France and Spain,* where shall then a Protestant find one foot of ground in the whole world, to set his foot in quiet?

Therefore, it seems to me of vast concernment, in one day to launch into a war which hath so much weight in the consequences of it.

At length, this debate was adjourned until Wednesday. †

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*Tuesday, February, 22, 1658.*

I came in late, so knew not what was before; I suppose only the orders of the day about bounding the other House. Divers persons had spoken to it.

I found *Mr. Gewen* speaking; and it seems his aim was at King, Lords, and Commons.

* The treaty of the Pyrenees (see *supra*, p. 294,) produced in 1660, a marriage between Louis XIV. and the Infanta.

† "Resolved, that the matters of this debate be taken into further consideration on Wednesday morning next, at nine of the clock."—*Journals*.

During these important civil avocations, the Parliament appear to have found leisure to aid, by their authority, the progress of religious persecution. The following orders prepared a plausible apology for the "Act of Uniformity," in 1662, and the various severities against the Nonconformists, by which it was enforced.

"Westminster, Feb. 21, 1658-9. At the Grand Committee for Religion,

"Ordered, that it be referred to the sub-committee named, to bring in the Bill for supply of the defects in the Act for the observation of the Lord's Day, to peruse the several Ordinances and Acts for abolishing of the Book of Common Prayer, and to consider wherein those laws are defective, and to bring in a Bill to supply the same; and further to prevent the using of Common Prayer, and to provide against the using of other superstitious ceremonies and practices in divine worship.

"It was further ordered, that it be referred to another sub-committee, to consider how to suppress the meetings of Quakers, Papists, Anti-Sabbatarians, Antitrinitarians, and of the setters up of Jewish worship; and two worthy members were desired to take care hereof, and to bring in one or more bills to remedy the same." *Mercurius Politicus*, No. 555, p. 261. See *supra*, pp. 207, 208.

*Colonel Gorges.* The new Lords are fittest, and an honest cobbler better than one hundred old Lords. I would not have them hereditary.

*Mr. Stephens.* Since the last day's debate, I have met with this objection, that those that are for the old Lords are for the old line. I do not take the line to be fundamental. Nothing is fundamental but the will of God.

By the statute of 14th Elizabeth,* and by other statutes, it is clear, that the Crown may be limited in all things. The declaring of the line was always subject to the power and disposition of the Parliament; but it is new light to me, that ever one House did, or that one House had power to put down another. I should be very loth to hear such doctrine.

The ground why the Lords were always called to sit in Parliament was, because they had the greatest share in the kingdom; but it is not so now. Abbots, Priors, and Bishops, had one-third part of the kingdom, the Lords another; but now the Commons have obtained a larger interest in the land, and therefore they should have a greater share in the Government. I would not have the two Houses fall out among themselves. Let us tie ourselves to some reasonable rule.

Two Houses was the ancient foundation. Lords and Commons in all ages have had the Government, with the single person, and carried the power of Parliament.

Restore such old Lords as have not forfeited, and add some new ones. Their number is part of the power. I

* In 1571. "The iniquity of those times," says *Camden*, "and the love of the estates in England (which were then assembled at Westminster,) towards their Prince and country, extorted a law for preventing the practices of seditious persons." Among several clauses for the protection of the Queen, "it was enacted," evidently to counteract the pretensions of the captive Queen of Scots, "that if any man should affirm that any other hath a right to the Crown, or that the laws and statutes cannot limit and determine the right of the Crown and the succession thereof, every such person should be guilty of High Treason." *History* (1675), pp. 166, 167.

would have the number and the persons themselves, as the King was moved they might be, by approbation of this House. Their power the law will regulate.

But the great thing is the negative voice. A negative voice in them, generally, I think not fit; but all Acts are not of the same nature. There are public Acts and private. The private Acts may pass without them; but, if the House of Commons do declare any Act to be a public Act, if difference happens that cannot be reconciled by conference, then let both Houses, *pro hac vice*, sit and vote together.

I shall never give my consent to put that yoke upon ourselves of this other new House; where, I hear, there are some sit that have endeavoured to make the greatest breach upon our liberties that can be. When you have set up them, for aught I know they may pull you down. I may be made a slave by the sword, but I will never make myself a slave.

Some in that House have carried elections this Parliament, very strangely.* We know not what they may be led on to. Some have the long sword by their side, and perhaps may help to hew you down and pull your House over your ears.

*Mr. Pedley.* This nation has been a long time in a desperate distemper, and you ought to use as much reason, wisdom, and moderation in this, as may be. Consider the condition of the nation, what at present they are able to bear. The laws will well fall in with the frame that you propound; a monarchical government, by a single person and two Houses of Parliament. Look at your ancient records, *Hen.* IV., *Hen.* VI., *Ed.* IV., *Rich.* III.'s time. You will find how that, in cases of necessity, the King and Commons together might have made a constitution suitable to the good of the people.

You have propounded that you will not let them appear abroad, till they be well dressed. I would have you make

* See "Lord Lambert," *supra*, p. 323.

something the matter of your debate; as to limit the power. Begin first with this, that they shall not be hereditary.

*Mr. Buller* stood up and read his speech.

You have now set up another House. It is not in your power to limit another House. We are in another House. We cannot limit them. They are judges of their own members and privileges.

He was laughed down.

*Sir Henry Vane.* I move that the worthy gentleman be not interrupted, seeing he is pleased to bestow his pains among us.

*Mr. Buller* went on; but I know not, nor any body else, what he would be at; but that by our votes we had excluded our bounding them, and must ask them leave, whether they will be bounded or no.

*Major-general Kelsey.* It hath been argued that you should have a House of Peers, and that is that House you are now a bounding of; and if it be so, you must ask them leave whether they will be bound or no. Whatever resolution you take up for bounding them, I can hardly believe they will consent to it. Yet, if they sit there by an ancient right of co-ordination, I am sure you cannot take any thing from them without their consent.

It is hard to limit men's power; they will rather strive to enlarge it. I have found by woful experience, that power is willing to enlarge itself, but never to be restrained. If they have a right still to sit, then the law which took them away is no law. If they be another House in being, if they have a legal right, your bounding is out of doors.

If the Long Parliament had no legal right to take away the House of Lords, then it must be granted they have a right of sitting. Otherwise they have no right, and surely that Parliament has as much power to take away them as well as the kingly government.*

I find that law of 14 Elizabeth can cut away a line. For-

* See *supra*, p. 357, *ad. fin.* vol. ii. pp. 38, 279, 388, 430, 431, *notes.*

merly I have heard the Long Robe insist upon it that no law is of force but what is made by the three estates. If the law was not good which took away the Lords, because the Lords did not give their consent, then the law which took away the king is not good, because it was made without the king's consent. It will then as naturally follow that Charles Stuart is as rightful king at this day as the Lords are rightful Lords. And if it be objected that Charles Stuart has forfeited his right, there are of that line* that have never forfeited it. So then there is no foundation for any thing that hath been done since. All hath been a mere usurpation of the House of Commons.

In doing this, we shall draw all the soldiers upon us, and all purchasers of public lands, and a great deal of confusion. And I do desire to see how this dilemma can be avoided, and where the difference is, that they could make a law, to one end good, but, through insufficiency, not to another. To begin upon such a foundation will inevitably shake yourselves.

I wonder how it can be urged that the House of Lords sit upon a legal right. Sir, the Long Parliament made many laws. Either they are of force or not. If they be, why do we dispute them? If they be not laws, then the Petition and Advice is no law. The Petition and Advice is a thing I was never for; I never gave my vote in it, yet is it a law and in being, else, I am sure, the Scotch and Irish members cannot possibly have power to sit here.† I wonder any such person should argue so, seeing they sit only upon that foot.

Either the Petition and Advice hath power and authority in it, or it hath not. Consider that first, whether that be a law. I pray, let no member sit here that hath no right to sit. If Scotch and Irish members sit upon no right, it may afterwards reflect, to make void your law. I speak not against their right in equity to sit here,‡ but only by way of argument's sake.

If then, the Petition and Advice be a law, before you go

* Probably meaning Henry Stuart, Duke of Gloucester.

† See *supra*, p. 29, *notes*. ‡ See *supra*, p. 346.

any farther, you must consider of it as in being, and then think how to limit and bound the Other House; and then you must have their consent to the bounding of themselves. These you may limit and bound; but if you declare the old Lords' right, those you cannot limit. They will tell you, they have and know the bounds already, they sit upon as good a law as you do, and they will not be bounded by you.

Divide the lands of the nation into twelve parts. The Peers at this day have scarce a twelfth part, when they had two thirds; yet they must have a co-ordinate power with you. It was reason that they had a co-ordination. The same reason is not now. Many gentlemen now sit in this House of Commons, that have as good estates as any of those Lords. You shall find that forty-two of them have not forfeited.*

If you go this way, I doubt you will lay a foundation for Charles Stuart's coming over. The other Lords you need not fear. I would have in first place, what you mean by this Other House, else you shoot at rovers. It is a vain thing to bound them. You are bounding, and do not consider what it is you would bound; till then you run but a loose bound.

Therefore, let us debate what this other House is we intend. If it be a Lords' House, say so. If it be the other House now sitting, pray say so too.

*Major Beake.* Because the question is perplexed, something else ought to be previous. Let it be your question before you bound, whether the old House of Lords be in being, or whether this House now sitting have any evidence, or the Other House shall be the House of Lords.

*Captain Hatsell.* We talk of going step by step; but, if we vote in the old Lords' House, we do not only go by steps, but we make a pair of stairs for Charles Stuart to run up to the top, into the room of the single person.

I move, therefore, to bound in this House now sitting.

I would have it the first matter of your debate that the Other House shall not be hereditary.

*Mr. Nathaniel Bacon.* You are not now constituting of

* See the Peerage, *supra*, p. 362, vol. ii. p. 448, *notes*.

any House; but declaring limits and bounds of that Other House which you intend shall be parliamentary with this.

You cannot make any bounds fit for all persons. If you vote the persons first, you can never set their bounds, for they must vary, according to the persons. If you respect the persons in the House now, you are led into a wilderness. It may fit the persons now, and not fit them afterwards.

It has been propounded, as to the bounds, whether those that sit in the Other House shall sit there hereditarily, or by succession. I think fit to begin there. I would have you first declare what rights the old Lords did legally exercise. Examine those powers.

I would have it considered, that which is propounded, that it might not be hereditary. And, as to the first, I think the old Lords never sat there hereditarily. They never sat by birth, but according as they were called by the king's writ. They were sometimes called, and sometimes left out. No Lord could challenge a right to sit there, without a writ. It was never intended that children, fools, and madmen, should sit there. They were not called, for those that sat there were called to advise, and they could not advise that were not qualified for it. Is every man fit to advise a king? the writ says "advise." It is against reason that unfit persons should be called. Therefore, there was no power or right to sit there by inheritance, but by election. It may be, they had it for life; it may be, not so long. Some were called one Parliament, and left out another.

I would have them to be elective, and to be no longer than for life, at the most. Therefore I shall propose, as the fittest bounder, that they may sit by election.

*Mr. Hammer.* I move, that as many as are now called by his Highness may be approved on by this House, and that as many of old ones as are capable be called in, and approved likewise by this House.

*Mr. Trevor.* To the order of your proceedings.

You are pleased to order that the Parliament shall consist of two Houses. This day you have ordered to bound it

The best rule to pursue is, what is for the safety and good of the people, which should be the rule of this debate.

There is a necessity of bounding those powers which have been formerly exercised, which did consist of two parts, the judicial and legislative, that our late revolutions have awakened us to care for. When our powers are agreed on, we shall best know to what persons to fit them.

We are to consider first, how far it is bounded, and then it is fit to consider what boundaries, in reference to the people's safety, should be given to them; and first begin with the judicial part.

*Mr. Knightley.* When a point is before us, we may discourse upon something. So long as we are in a wide field, and never a gap open, we shall ride round and round and never get out.

I second Mr. Trevor's motion to begin with the power of judicature in that House.

*Colonel Thompson.* That which is moved and seconded, is that they shall not be hereditary. Though I was not at taking away the House of Lords, yet I believe they are taken away.

You are told that they were formerly considerable, and had once the greatest interest. It is now told you that most of their sand is run out into your glass.* The Lords' House is melted down into the Commons. If you set them over you as high as formerly, I doubt your sand may run into their glass.

But you are resolved of another House, and some would have it hereditary. I would have it first considered if they shall be hereditary; I am against that opinion; for they may be unfit, by poverty or want of bread; and, being judges, they may be corrupted. I would not have them to judge in any thing between commoner and commoner, or that concerns a commoner, until the cause be transmitted to them from hence, as in writs of error, &c. I have known judgments suddenly

* See *supra*, p. 404.

given in that House, against decrees in Chancery of sixteen years standing.

I would have the persons named by the Protector; and the approbation of this House to every single person that is named to sit in that House.

*Mr. Jenkinson.* I would begin with the judicial power. There is less danger in that than in the legislative. It is nearest to come to your end. But to begin with the hereditary is to begin with that which is not so dangerous.

I would have it referred to a Committee to consider and provide you somewhat that may bound them in that point.

*Sir William Wheeler.* I am against referring it to a Committee. It is too great a work to be done by any but by the House itself.

Lord Coke says, that any called to that House have a fee-simple right to sit there.* Be he poor or weak, he may sit.

Therefore, first consider whether they shall be hereditary.

I am against their being hereditary. It will draw after it all inconveniences and dependences that formerly attended them. Three parts in four deserted in the last war. It is for the safety of the nation to declare they shall not be hereditary.

Make that your first question.

*Sir John Lenthall.* In the beginning of the debate, I was for opening the doors to such of the nobility as have been faithful to you, and all persons of the Other House that were capable. I am not convinced as yet of the contrary.

Their merits in ancient times were great. Great benefits

* "As the barons' honour is inheritable," says *Elsynge*, "so their coming to Parliament hath ever been reckoned an essential point of inheritable honour, as given them by the king at their first creation." See "The Ancient Method and Manner of holding Parliaments in England," (1679,) p. 52.

"As the King hath not used to omit any lord that hath been within the land (*rectus in curia*), and of full age, so none have used to come to Parliament, until he had received his writ of summons: but in such case he may send to the Lord Chancellor for his writ." *Ibid.* p. 59.

we have had by the old Lords. *Magna Charta* was obtained by them,* in such a time when the Commons scarce durst ask such a thing from the King. The assistance they gave in the late wars, was likewise very memorable. I shall come now to what they obtained from the late King, whereof *Magna Charta* was but a counterpart.

If this House be not hereafter so well qualified as it ought to be, then will this screen† be of great use.

I am for another House; for suppose religion should be in question, and if the single person be alone, he must pass it. If men of strange religion should come in, and if there should not be a screen, our religion were gone.‡ Our laws may be

* On "their merits," in this instance, see vol. i. p. 406, *note*.

† See "Mr. Drake," *supra*, p. 349; "Baron Thorpe," vol. ii. p. 446.

‡ Alas, for "our religion!" which thus suddenly "were gone," or which a vote of either House, or even an enactment by the three estates, could create or destroy.

From "Some Traditional Memorials on the Reign of Elizabeth," it appears that the Queen, in her too-customary exercise of despotic authority, accommodated "the Parliament" to her purpose of imposing the religion which the crown chose to profess, on an ill-educated and acquiescing people, by "denying all farther debate," when she had erected her *terminus*. This was "so notorious to all," that "the doctrine professed most generally in England, bore in foreign nations the name of Parliament-faith." See "The Works of Francis Osborn," (1673,) p. 450.

In 1721, there was an attempt to advance that idol of civil power, religious uniformity, by persecuting Antitrinitarians, under the specious disguise of "A Bill for the more effectual Suppression of Blasphemy and Profaneness." On this occasion, the Earl of Peterborough declared, "that though he was for a parliamentary King, yet he did not desire to have a parliamentary religion, or a parliamentary God."

This Bill was introduced by a Dean of Windsor, Lord Willoughby de Broke, and supported by the Primate, Dr. Wake, and the Bishops of London, Winchester, and Lichfield; yet one was found on the Bench, a singular prelate, (like a *Bathurst* in our days,) who declared "that neither himself, nor, he hoped, any of that Bench would be executioners of such a law, which seemed to tend to the setting up of an Inquisition." This Prelate was the Bishop of Peterborough, Dr. White Kennet. To the honour of the Lords, the Bill was rejected "by 60 against 31." See Oldmixon's "History of England," (1735,) pp. 718, 719.

"Make religion what you will," says Robert Robinson, "let it be

also destroyed by the same rule. I move to examine the power they have by the Petition and Advice. Let the limitations there be the rule; or, if those be not restrictive enough, bound them farther.

*Mr. Bodurda.* To the order of proceeding.

I move to begin with the question, whether they shall be hereditary.

*Mr. Cartwright.* It is not proper to bound the Other House, until you say what it shall be.

I move to consider first, which of the Houses you will have, and then fit the powers and bounds. Your powers, haply, may not fit the old House of Lords. By the Petition and Advice, the Other House have no legislative power given them, and if you bound them upon that point, you will give them something they never had.

*Mr. Attorney-general.* I move to make it the ground of your debate, that they shall not be hereditary. The old Lords had clearly an hereditary honour, but hereditary right, as to session in Parliament, they had not, without being called by writ.* Formerly, they had no stinted number. Anciently, three Lords made a House, and the absentees sent their votes by proxies.

*Mr. Young.* I am sorry to trouble you; but you are well minded, first, to consider which of the Houses you will have, old or new.

I am perplexed how to give my vote. If old Lords, it may be, I shall give my vote that they may be hereditary, and have a negative. But if the new Lords, that are your creatures, I shall give them neither.

*Sir Thomas Wroth.* We are here come to make our condition better than it was before.

It was not so in Queen Elizabeth's time, that three made

speculation, let it be practice; make it faith, make it fancy; let it be reason, let it be passion; *uniformity* in it is not to be expected. Philosophy is a stranger to it, and Christianity disowns it." *Arcana,* (1774,) p. 23.

* See *supra,* p. 411, *note.*

a House of Lords. Of late there was packing a House of Lords. They were the King's creatures. Let us go as far from the old constitution as we can. Take in some of them that are capable. Let us nourish the best flowers, and husband them for our best conveniency.

I would have the hereditary question go first, and then the judicial. I am against hereditary lordship, for the reason why his Highness refused king;* because he knew not what he that came after him should be, a wise man or a fool. I see plainly here is a great inclination to come round again. It is to bring in old Lords by degrees, and then, consequently, one who I hope my eyes shall never live to see here.†

It is fit we should have a kind of check upon us. Many laws passed, in the late Parliaments, very lame and imperfect.

On the other side, to have another House; that will be a dishonour to the nation. I shall scorn it as much as any man in the nation. If we have a House of mean people, we shall contemn and despise them.

A poor judge is dangerous. It is hard for a poor man to keep a good conscience in so high a place. A man has two hands, to take from whom will give most.

Put the hereditary part first to debate.

*Mr. Bodurda* offered the question, whether the persons called to that House shall transmit to their posterity an hereditary right of sitting in that House.

* There were other sufficient reasons for this refusal. See vol. i. pp. 382-385, 420, *note;* ii. 116—119, 140, *note.* On this subject, the following remark, by Thomas Gordon, in 1723, may be worthy of quotation:—

"Had Cromwell been declared king, I doubt not but his preachers would have found a revelation for it, and probably the coronation sermon would have abounded with texts that gave him the diadem. It would not have been the first nor the last time that the Bible has been made a great courtier, and Heaven the voucher of wickedness and falsehood." *Cato's Letters,* (1754,) iv. 275.

† This hope was frustrated. Yet Sir Thomas Wroth was "entirely safe at the Restoration." See "Lives of the Regicides," (1798,) vol. ii. p. 339.

*Colonel White.* I move not to admit it that they now sit, for that is a granting the other question.

*Mr. Jenkinson.* I move that the question be, if they shall only have a right of sitting there for life.

*Sir John Northcote.* It is apparent the old Lords did not sit by an hereditary right.* You may go upon your old grounds and yet preserve that.

If you give them a negative, it will be clear that the single person shall have two negatives; for he shall have them his own. Put the question whether the other House shall consist of the ancient nobility that have not forfeited their rights.

*Mr. Raleigh.* It appears not to me but the old Lords had a right of sitting by inheritance. A letter was sent from the Lord Keeper to a Lord ————† that was called to the House of Lords, notwithstanding his writ, to forbear sitting; but he prayed judgment if for any letter he ought to forbear. It resolved he ought not, which proved it hereditary.

I would have it first put, if it shall be hereditary.

*Mr. Knightley.* A man may be worthy in one Parliament, and unworthy in another Parliament. I am not able to give a *Yea* or *No* to hereditary; but if you say that their claim is not hereditary, I can give my vote. Some, I believe, in the Other House would refuse hereditary, as they do a negative, if it should be given them.

*Mr. Onslow.* I am afraid we are in a wood. No wonder the nation is puzzled, when the wisdom of the nation is puzzled in this place. Once out of the way, we see how hard it is to get in again.

Whether do we debate here upon a supposal that we are boundless and without limits. I hope, while making limits for others, we make not ourselves boundless. If so, we shall leave them very little power. I know it was once esteemed our right to vindicate our own privileges, not to take away those of other men.

I shall not debate whether to have old or new peers. It is

* See *supra*, pp. 409, 411, *note*.

† "The Earl of Bristol." *Goddard MS.* p. 219. See vol. ii. p. 415.

enough that we do something to bar the old lords of their rights. None of us are attornies or solicitors.

It is pressed, the King can do no wrong; I hope we shall not do wrong to any, much less to a whole body of a House of Peers, to take away their rights. You have a difficult work in hand. Put no question that will involve us in a wrong. We are with freedom ourselves.

We are called to consult with nobles and great men. We have had no complaints from them. They cannot properly complain to us. I suppose they complain to their own House if any such thing be. I know not why we should take notice of their privileges. You cannot create power. If any thing amiss in their power, why may they not join with you, as formerly Peers have done, to limit themselves? Why may we not consider a House in being, and consult with them, in limiting and bounding their own persons and powers?

Go on with your law, and then talk of limits and bounds. Leave it to the law to interpret their bounds.

*Sir Lislebone Long.* This House is not so bound up, but if any evil be in a constitution, this House certainly hath power to remedy it.

I cannot understand their arguments that say the Lords were not hereditary. Whether it be for the good of the people that it should be so, or not, may be a question. I find in some Parliaments a whole House called, and all left out the next Parliament; but this was in times of troubles and difference between York and Lancaster, when the nobles were abroad in the wars.

The case cited was the Earl of Bristol's, and by judgment of the House of Lords, he was admitted.*

Another was Lord de la Mare, disabled by Act of Parliament, and yet his son claimed it, and was admitted to his right.†

* See vol. ii. p. 415, *note*†.

† This may be an incorrect account of the following:—

"John de la Mare, of Garington, in the county of Oxford, had summons 28 to 33 *Ed.* I., but none of his descendants continued in the rank of Barons.' *Extinct Peerage,* (1769,) p. 192.

I can by no means apprehend that you should first define the Houses, and leave the powers to be determined by law. This is a leaving of fuel for posterity. You must determine the powers. This may well come under this head, that the power shall not be hereditary.

It is fit what power they shall have should be stated here. They anciently claimed very large powers, and not all for the good of the people. They have judged of the lives of the Commoners and of property. It is not for your service that they should have that power, or that the bounds should be so uncertain.

Without declaring my own opinion in the case, make this your question; that a member sitting there shall not give his heir an hereditary right to sit here.

Where the old Peers were called, if there was no limitation in it, they could not sit otherwise than *pro hac vice;* but if a limitation were in the writ, then they might sit according to that limitation.

*Colonel Terrill.* I am of opinion that the old Lords sitting there, were not hereditary. They were called by writ as we are, and could not sit longer than Parliament lasted; but this happened where a patent was made to a Peer, and the heirs male, of his body. Therefore the lords that claimed, had a right, and whether that right were taken from them I shall spare to speak of it, till the debate come properly before you.

*Sir George Booth.* I shall be bold to second this question: to consider of the persons before you consider of the powers; for what is more natural.

Those Lords that have done you service shall be no Lords, and those that have done you no service shall be Lords. This is somewhat hard.

*Colonel Mildmay.* The debate of this was waved before, and you resolved to consider the powers first, and then the persons.

*Mr. Manley.* I hope you are so well founded, as to your own sitting here, that you want all the blemishes that former Parliaments have had.

Let us go on clear grounds, that every man's judgment and

conscience may be satisfied. We find another House, and if his Highness had not called them, he had not done his duty. Unless you bring them to be a House of Peers, I see no power you have given that is affirmative, but only negative.

I would have you first assert their powers. I find them not in the Petition and Advice. The debate has admitted a right in this House to determine the powers. To follow the tract of the law will lead you into many inconveniences. The Petition and Advice is not large enough for you to debate upon.

*Mr. Turner.* I know no way to proceed in this, than as you did concerning the single person. The same must I say now.

If it be upon old Peers, then I question whether it be proper for you to bound them. If upon a new House, then it is proper to bound them.

But declare first, whether you are upon a constitution or a restitution. I doubt your vote looks back as well as forward. The word, be, goes a great way.

*Sir Richard Temple.* I would neither look at one House nor another; but would have it the matter of your debate what these persons shall be, under such bounds and limitations as you shall agree them; what the persons shall be that this House shall consist of, under such bounds, &c., as this House shall agree.

*Colonel Cox.* I have been always jealous of this other House. It was, first, in the last Parliament, that the Protector should nominate, and we approve; but the approbation slipped out, I know not how; which hath since made me think of the tale in Æsop of the Fox, who desired only to get in his head, and he would after bring in his body.

I am very well satisfied that there should be another House; but not with your question, that the persons should first be considered.

*Sir Anthony Ashley Cooper.* If you would have us all of one mind, your question must be as clear as may be. The first question ought to be, whether there be a right or no; for, where there is a right (in all the actions of a man's life), there is a duty; and then matter of convenience or inconvenience

is out of doors. Two rights are offered to be in being; one of the old Lords, the other of the other House, or new Lords, who have already a vast power in their hands, and dangerous to the people. Some tell you the right of one House, some of another. I offer it to you that it is not fit, and if it may not be dangerous to prejudge or preclude either of their rights before you agree to the persons. If there be a right, then all their boundaries must be offered to them, whether they will pass them or not; and I have seldom found men in power to part with it upon easy terms. It is therefore necessary to be cleared, how far we are to deliberate and restrain them in this point.

Seeing great rights are claimed on both sides, let me be satisfied in that point, first, before I can give my vote. The consideration of the persons is most natural.

One while it is argued for right, *pro* and *con*, and persons differ; and then they fly off to conveniency.

Matter of right and of conveniency are two different things. Therefore, now take into consideration these two claims. Consider first, whether the old Lords or new Lords have a right or no, and then go on to bound them.

*Colonel Birch.* I was loth to interrupt any worthy gentleman, though I might have done it. They speak against your order; that you should first consider of the bounds.

I am still of the same mind, that you must proceed upon the bounds. The matter of right will come in upon the bounds.

I desire you to keep to your order; and lay it, whether those that sit in the other House, shall sit there by an hereditary right.

The question was a question propounded upon hereditary.

*Mr. Swinfen.* I shall speak to your question. Scarce any gentleman has spoken *ad idem;* because something is to be cleared first. The same reason that led you before must lead you now. There are two Houses in debate. It is, therefore, necessary to have a previous question, whether the Peers be excluded.

Those that do debate for old Lords, must say, hereditary; those that are for the other House, must say it is not.

This must be cleared, else we cannot freely vote. I am for the old Peerage, and they were as hereditary.

I would have your question to be upon, who shall be members of the other House, and adjourn this debate, because it is late.

*Mr. Godfrey.* I hope, without expense of time, you may come to a question. I find the same difficulty upon you now as was the other day, when you debated about the two Houses. On one side the old peers, on the other, the other House, by the Petition and Advice.

Here are two rocks,

1. The asserting the ancient Peers.

2. The asserting of the other House.

You then found out a prudential way to avoid both those rocks, by neither excluding the one, nor asserting the other; and your vote seemed to satisfy the sense of the House.

I see the same tenderness now, by a side vote, to exclude the right of the old Peers, or assert the new, by the Petition and Advice. You may word your question, to be the subject of your debate, that it be a part of this bill to debate the persons sitting in the other House of Parliament, to have an hereditary interest and right to sit and vote. By this you neither exclude the right of any, nor assert the right of any Parliament.

*Mr. Goodrick.* I hope, before you make your hedges, you will set your stakes; that you will first declare whether the old Peers have a right to sit there that have not forfeited their right.

*Mr. Speaker* propounded that question, whether the ancient Peers that have not forfeited, have right to sit in the other House.

*Sir Walter Earle.* We are all bound to maintain their rights. If you lay that aside, you lay aside their inheritance. You bring them into a worse condition than the poorest cottager in England, if you take away what is their inheritance. That is your proper question. I question the validity of that vote that called them useless.*

* See vol. ii. p. 388, *note*.

*Mr. Gott.* They found the unsuitableness and inconveniency of a Commonwealth with the constitution of the people. Then they came to a single person and a Commonwealth; but neither of these were *unius seculi.* The ancient constitution we are again come to; a single person and two Houses of Parliament.

I do desire not to declare the persons now sitting in the other House, nor exclude the old Peers. Leave yourselves at large. A many great men are in the other House. I would have some nobles. Our writ is to consult with great men and nobles. There are some that have a good sword. I would have some there that have a good purse; and both together will make a good balance. Nature and necessity oblige us to determine upon the persons; what persons the other House shall consist of.

The question was propounded according to that motion.

*Mr. Trevor.* I am satisfied that the other question is not clear. I am not bound to put such a question. When in my conscience I am satisfied about the right, but not satisfied about the practice, the consequence will go very far against safety. I doubt if you let in that, that it will not be practicable.

If you please, adjourn the debate till Thursday.

*Captain Hatsell.* I am not ashamed to say, I am afraid, when I am afraid. If you let in this question, the consequence will be very dangerous. What hath the son of Lord Goring*

* "The King's party in Colchester," says *Ludlow*, "were forced to surrender on the 28th of August, 1648, upon articles. The Lord Goring and the Lord Capel were sent prisoners to London, and committed to the Tower, by an order of Parliament." *Memoirs*, (1698,) i. 264.

After he had been condemned to death by the High Court of Justice, it "was carried by one vote," March 8, 1648-9, "that the Lord Goring should be reprieved. This one vote," says *Whitlock*, "was the Speaker, who carried the House, between equally divided, four-and-twenty of each part; and he said he did it, because he had formerly received some civilities from the Lord Goring, and his single vote now saved his life." *Memorials*, (1732,) p. 386.

or Lord Capel* done, to forfeit their right. If you admit a right, there is no keeping them out.

* He was beheaded March 9, (the day after it had been voted, "that the Lord Capel should not be reprieved;") dying "much after the manner of a stout Roman. He had no minister with him, nor showed any sense of death approaching, but carried himself all the time he was upon the scaffold, with that boldness and resolution as was to be admired." *Ibid.* pp. 387, 388. See Lord Clarendon's *History*, (1712,) iii. 272, 273.

After an interesting description of Lord Capel, whose heroic resignation of life deserved a worthier object, Lord Clarendon immediately adds:—"So ended the year 1648, a year of reproach and infamy, above all years which had passed before it, in which the memory of all the transactions ought to be rased ought of all records;" as Burke once, when under the influence of his organ of *destructiveness*, erased France out of the map of Europe.

Yet in this *annus mirabilis*, or *execrabilis*, as opinions may vary, there was one event, which the noble and diffuse historian has unaccountably compressed into a single short sentence, though most worthy to be rescued, by his usual elongation of a period, from the threatened general oblivion. "There was a woman at the Hague," says Lord Clarendon, "of the middling rank, who, being with child, with the horror of the mention of it," (the King's execution,) "fell into travail, and in it died." *Ibid.* pp. 273—275.

In England, as appears from the following article of early intelligence, the execution of the sentence on King Charles, could be more calmly considered, as if executed on any other convicted criminal, in the exercise of rigorous public justice; while the right or policy of inflicting, on either prince or peasant, the punishment of death, of which there are such reasonable doubts, had been seldom or ever questioned:—

"The 30th of January, 1648, was Charles, King of England, Scotland, France, and Ireland, put to death, by beheading, over against the Banquetting-House of Whitehall, the place where formerly King James had all the fencers of London encounter each other, in their school way, for content of the King of Denmark, who came out of his kingdom to visit him, the scaffold being made from the same window, and in the same manner, only larger." See "The Moderate Intelligencer, Jan. 25 to Feb. 1, 1648-9." No. 202.

Bishop Horsley, 144 years after this execution, appears to have been *horrified* at the recollection of it, like King Charles's too sympathetic female contemporary "at the Hague." I well remember listening to his Lordship, in 1793, when he thus declaimed, amidst all "the pomp and circumstance" of his recent prelatical preferment; afterwards thus enforcing his holy abhorrence, from the press, by the printer's aid of a few imposing *Capitals*:—

*Mr. Knightley.* If we be under a force, let us adjourn ourselves, and sit no longer. Here is plain threatening.

"But if any have DARED to avow the WICKED sentiment, that this day of national contrition, this rueful day of guilt and shame, 'is a PROUD day for England, to be remembered as such by the latest posterity of freemen,' with such persons it is meet that we abjure all brotherhood. Their spot is not the spot of our family. They have no claim upon our brotherly affection. Upon our charity, they have indeed a claim. Miserable men! 'They are in the gall of bitterness and in the bond of iniquity.' It is our duty to pray God, if, perhaps, the thought of their heart may be forgiven them." See "A Sermon preached before the Lords Spiritual and Temporal, in the Abbey Church of St. Peter, Westminster, on Wednesday, January 30, 1793; being the Anniversary of the Martyrdom of King Charles the First. By Samuel Lord Bishop of St. David's." (1793,) p. 25.

Among these "miserable men," who thus agreed with Mr. Fox, (*supra*, p. 110,) it was, I believe, Lord Keppel who had "DARED to avow the WICKED sentiment," in the terms alleged. Dr. Priestley, who had been the preacher's theological opponent in the Trinitarian controversy, and who pleasantly claimed to have made Dr. Horsley a Bishop, was thought by some to be intended. In his "Essay on the First Principles of Government," Dr. Priestley had, indeed, expressed an opinion that "such a transaction will appear an immortal honour to this country, whenever that superstition of the sacredness of kingly power shall be obliterated. Charles I.," he adds, "whatever he was in his private character, which is out of the question here, was certainly a very bad King of England. If he was misled by his education or his friends, he was, like any other criminal in the same circumstances, to be pitied, but by no means to be spared on that account." (*Works*, xxii. 25.)

But poets have generally been foremost in the adulation of deceased princes, often a ready way to conciliate the favour of living royalty. Thus *Tickell*, as quoted by Dr. Harris, (*Lives*, ii. 488,) exclaims on this occasion, in a style of indignation, impious, or at least extravagant:—

"Where then, just Heav'n, was thy unactive hand,
Thy idle thunder, and thy ling'ring brand!
Thy adamantine shield, thy angel wings,
And the great genii of anointed kings!
Treason and fraud shall thus the stars regard!
And injur'd virtue meet this sad reward!
So sad, none like can Time's old record tell,
Though Pompey bled, and poor Darius fell.
All names but one, too low,—that one too high:
All parallels are wrong[8] or blasphemy."

*Mr. Turner.* This is a plain threat. I am not afraid to do right. Let us go plainly to it. If it be their right, let us not be ashamed to give it them. I have no fear upon me at all.

*Mr. Jones.* I move to put the question as to the right of the ancient Lords.

*Mr. Disbrowe.* I move to adjourn. I am not free to give my vote upon this question of right, at present.

It seems the other party were at a loss, and prayed to adjourn the debate, and it was adjourned accordingly.

The House rose at one.

On this "too high" parallel, *Young* adventured, who was an early candidate for royal favour, and thus records, in declining age, his continued disappointment:—

"When in his courtiers' ears I pour my plaint,
They drink it, as the nectar of the great:
They squeeze my hand, and bid me come to-morrow.
Refusal! canst thou wear a fairer form?"

In 1713, he published "The Last Day," with a dedication, grossly adulatory, to Queen Anne, though not too gross to receive the "Imprimatur Vice-Can. Oxon.," according to the censorship then in force. The poet, unawed by an appalling theme, which might be expected to inspire no words but those "of truth and soberness," introduces a compliment to the British Queen, by thus panegyrising her grandsire. Of the concluding lines, it is difficult to determine whether to admire most, the absurdity or the profaneness:—

"But what is he, who midst the radiant bands
Of spotless saints and laurell'd martyrs stands
Conspicuous from afar? Whose rays so bright
Solicit, and attract the ravisht sight?
In whom I see two distant virtues joyn'd,
A royal greatness and an humble mind.
His lifted hands, his lofty neck surround,
To hide the scarlet of a circling wound.
The Almighty Judge bends forward from his throne
Those scars to mark, and then regards his own."

Yet after all the efforts of priests and poets to consecrate the death of Charles I., it appears, on the best authority, that James VIII. refused to recognize his grandfather's martyrdom. Lord Bolingbroke says, that when "the draught of a Declaration to be dispersed in Great Britain," was presented to "the Chevalier," in 1715, "he struck out these words,

*Afternoon at three.*

The business of Mr. Streete and City of Worcester* was taken into debate.

Mr. Finch† was counsel for Mr. Streete, and Mr. Latham

'that blessed martyr who died for his people,' and would say nothing more than that 'he fell a sacrifice to rebellion.'" See "A Letter to Sir William Windham," (1753,) pp. 276, 282.

* See *supra*, pp. 70, 253—256.

† See vol. i. pp. 334, 352. This barrister, whose father was a Serjeant at Law, became, in 1660, a Baronet and Solicitor-general; in that capacity, zealously devoting himself to the vengeful purposes of the restored royal court. In the case of that conscientious, if mistaken patriot, Major-general Harrison, the first prisoner tried, Sir Heneage Finch, even urged the Bench not to indulge him with a day's reprieve, but immediately to pass the judgment of death. On the trial of Mr. Scot, too, and other regicides, before some of whom he was now about to plead, (respectfully, no doubt, for they were not yet become powerless prisoners,) the Solicitor-general appears to have occasionally emulated the manner of Sir Edward Coke, who, in his pleadings for the Crown, as Lord Bacon once plainly told him, was "wont to insult over misery, and to inveigh bitterly at the persons." The Crown lawyers have since, generally cultivated a *suaviter in modo;* content not to worry the prey of whose destruction they were secure.

After representing in Parliament the University of Oxford, and attaining the office of Attorney-general, Sir Heneage Finch, on the disgrace of Shaftsbury, in 1673, was made Lord Keeper, created Baron Daventry, and soon after appointed Lord Chancellor. "He thought," says Bishop Burnet, "he was bound to justify the Court, in all debates in the House of Lords, which he did, with the vehemence of a pleader, rather than with the solemnity of a senator." Yet, "in his own court, he could resist the strongest application from the King himself, though he did it no where else." *Own Times;* (1724,) i. 365.

On the Roman Catholic Lord Stafford being judicially sacrificed, in 1680, to a Protestant alarm, excited by a pretended Popish plot, Lord Nottingham, "when he gave judgment, committed," says Bishop Burnet, (*Ibid*, p. 492,) "one great indecency:" for he said, "who can doubt any longer that London was burnt by Papists, though there was not one word in the whole trial relating to that matter." Yet of more than "one great indecency" towards a state prisoner, when on his dreary progress to the gibbet or the block, a Solicitor-general, in 1660,

for Worcester. Mr. Streete and Mr. Finch sat together at the bar.

The petitions, on both sides, were read. The charge was for delinquency and common swearing. A great many persons were present.

*Asserit* A, *negat*. B, point blank contrary.

*Serjeant Waller* in the chair, demanded whether they would proceed upon the election, or against the person first.

Mr. Latham. We will proceed against the person first, and that, inasmuch as he was a member. We expect we shall prove it well. If he had only lived in the garrison, it had not been enough; but we shall prove him in arms, and if my in-

who, since, for twenty years had been a favourite courtier in such a court, would be too easily capable.

In 1681, Lord Daventry "was created Earl of Nottingham," according to *Wood*, "as a mark of the great satisfaction his Majesty had in the many faithful services which his Lordship had rendered the Crown." *Athen. Oxon*, (1692), ii. 538—540.

The second Earl, who succeeded his father in 1682, was known in a walk of literature, where "Lords Temporal," are not often found. In 1719, he published "The Answer of the Earl of Nottingham to Mr. Whiston's letter to him, concerning the eternity of the Son of God and of the Holy Ghost." Lord Orford says that, "the University of Oxford, in full convocation, returned his Lordship solemn thanks. Mr. Whiston published a reply, which ended the controversy." See "R. & N. Authors," (1758,) ii. 125.

Notwithstanding this favourable judgment of the University, the Earl appears to have scrupled to rely, exclusively, on the force of argument which he had brought to this controversy; especially against such a practised polemic as William Whiston. His Lordship discovered, indeed, too much "of the courage of a combatant," as Dr. Jortin remarks on another occasion, "who calls upon the constable to come and help him." Thus, in the "Postscript," disputing Mr. Whiston's "demand for an open toleration," he appeals to "the laws of the land," and regards "an indulgence" to his antagonist's opinions, as "in some measure establishing these iniquities by a law." The Earl had just before quoted with evident approbation "the advice of Mæcenas to Augustus, never to suffer any innovation in religion;" thus unwittingly justifying the Pagan persecutions of the Christian Church. *Answer*, (1721,) pp. 157, 159. See "Memoirs of the Life and Writings of Mr. William Whiston," (1753,) pp. 222, 223.

structions fail not, it is as pregnant proof as ever came before you.

Mr. Smith. I know Mr. Streete. When the city was a garrison, I have seen him ride with gentlemen, well mounted, with pistols and holster. This was in 45, when the garrison was for the King. I believe those gentlemen were of the King's party. I have seen him ride so, alone, to and out of the town. I never saw him walk or talk with any persons but those that were, and are disaffected. I think it was Sir William Russel* he was in company of.

Mr. Finch. Under what captain was you listed, and marched?

He said he could not remember.

Do you not contribute to prosecute against Mr. Streete?

He answered, We are all as one man, but confessed upon the matter, he doth bear part of the charge.

*Mr. Knightley.* Was this information ever given to Committees, or Major-generals, either upon decimation or sequestration?

Answer. I was never called nor moved to complain, nor ever did complain. I never heard of any complaint. If he had sate still, I believe he had never heard of it, but he was puffed up with ambition.

Mr. Finch. Were the horse and arms his own?

Answer. He was able to have such a horse his own.

Did he do any duty as other of the King's soldiers did?

What number were there that he rid out with?

Were any quarters allotted him?

Whether rid they rank and file?

Of what age was he when he rid with this company?

Answer. Much about twenty.

Mr. Latham. If he was but sixteen, it is enough to bring him under compass of sequestration: *malitia supplebit ætatem.*

* It appears from *Rushworth*, that Worcester surrendered to Colonel Whalley, July 22, 1646, when "Sir William Russel was excepted from the benefit of the Articles." *Hist. Col.* (1708,) vi. 17.

Mr. Finch. Did you not yourself ride, and in arms, with the King?

Mr. Latham. It is not fit that he accuse himself.

Mr. Finch moved *contra*, that it was proper; for birds of a feather might know more.

Mr. Finch released the question.

Witness saw him but twice in all, once in company, and once alone.

John Butler. In the time of the King's garrison, I have seen him several times come on a good horse into the city, from his own house, with pistols, holsters, and sword. I was a prisoner. Several times, when the trumpet has sounded, I have seen him amongst their company in the street. I cannot justly remember time.

Thomas Eaton. I have seen Mr. Streete three miles from Worcester, in the month of June, about the middle of the war, before the great battle between Waller and Ashby.* There was a great sickness at the time. On a Lord's day, I saw Mr. Streete come to church as other officers did, with a sword. It trailed on the ground. Sir Gilbert Gerrard was governor. I have heard he had a house very near there. He and his sister were there. No soldiers were there at that time.

John Harthfoorth. When Worcester was a garrison for the King, my master sent me to the wall to clear my musket.

Mr. Streete, with several gentlemen, some of the King's officers, coming by, he said, he would see this soldier let off his musket. He threatened me, till I let off the musket.

I have several times seen him wear either sword, or rapier, most commonly. I cannot say he had then a rapier or sword.

*Mr. Collins* (a member) was produced to prove Mr. Streete was taken a prisoner by the Parliament, and exchanged for another prisoner.

It was moved that they might withdraw, but offered that

* At Cropedy Bridge, June 29, 1644. See *Rushworth*, v. 336.

the Colonel ought to be present to take examination. It was fit all should hear that they may know how to answer.

*Mr. Collins.* In May, 46, we were commanded to march under Colonel Morgan and Colonel Birch to Ombersley with all the forces in Worcester. In our way we met Mr. Streete, and other persons of the King's army, and took him prisoner. He was exchanged for a kinsman of mine. We could not have him released for two soldiers, but as soon as ever Mr. Streete was taken, on their own accord, they sent to exchange him, and my kinsman was released, and he released.

Mr. Finch being asked, if he did accept of the exchange, answered, he did not accept of the exchange, and insisted still he was not in arms. Mr. Collins was a Committee man, yet did never prosecute against him.

*Mr. Streete.* I was a prisoner under Colonel Morgan, but I could never accept of the exchange, for I always insisted upon my innocency; I have testimonials under the officer's hand.

Mr. Latham offered now to prove, that he kept company with cavaliers; but that was taken off presently as a thing not material. The counsel said they only offered that as a circumstance. It may be all the town was disaffected.

Richard Duce. In September, 57, I heard Mr. Streete swear, twice or thrice, by God, at his own house, without any provocation at all. I came to demand money of him for highway, as being overseer.

Thomas Duce, a minister. About December or November last, I heard him oftimes reiterate, by his faith and by his troth. There were by, Mr. Moore and his son.

Mr. Simon Moore, a minister.* Some civil carriage has been between Mr. Streete and me. Mr. Streete came to give me a visit, where, in civil discourse, it was ordinary with him to swear by his faith and by his troth.

* Dr. Calamy says, "he preached at the Cathedral. After Bartholomew Day, (1662,) through the fury and rage of the justices and people, he was forced to leave Worcester." *Account,* (1713,) ii. 768, 769.

I heard that Mr. Streete had a mind to stand. Some Christians intreated me to interpose with Mr. Streete to prevent it. I denied it, but being prevailed with, I sent to a special friend of Mr. Streete's to acquaint him that we wished he would not stand. I said, I fear he will do himself more harm than good. I heard one say he had been in arms. The man that first accused him was an honest godly man, Richard Hodgkins.

This Hodgkins told him all that I had said. That night Mr. Streete came to my house to give me thanks, as he said, for my civility. He told me he had never been in arms. Then he swore by his Maker that he would sue and undo that man that should give evidence against him.

Then he said he would steer by Mr. Collins's directions. He was in the next room, and I said it is well, you may meet; but as soon as he heard Mr. Collins was there, he went away in an anger and would not hear him.

Mr. Moore gave an account of himself, that he had been faithful from the beginning. He never prosecuted against him for swearing. That is an ill way for a minister to take. He has reproved him, and did not consent to his being chosen. He bears no part of the charge to prosecute.

Mr. Richard Moore. I have heard him often, since October last, usually swear by his faith and troth.

Mr. Latham. Though the law take off the punishment in point of time, yet I hope it will not take off the crime before you.

I shall offer nought at present to the election, but only rest it here for the present.

1. As to his delinquency.

2. As to his swearing.

Mr. Finch. This gentleman stands impeached of the highest crime that can be brought against any man in England.

The evidence ought to be very clear. We shall not need to support ourselves by the weakness of their evidence. Yet we shall not forgive it them.

I do not call Smith to an account for want of circumstance

as to listing and quartering; but as to the time of 45, and Sir William Russel, I shall except his going to church with a long sword with his sister. I hope that will not stick with you.

When a man comes to demand a petty tax, I leave it to your discretion whether a lawyer and discreet person will swear himself out of double the tax.

If the words were at length, "By my faith and troth," it will amount no farther then *bonâ fide*, or *in veritate*. The angriest interpretation will not do it.

If, for this, a member should be thrown out, for such a slip of frailty, it would be an easy thing to draw many members to such a slip. I shall leave that to your wisdom.

I shall only answer what sticks most: the evidence of a member. He was called from the University to manage the estate left him by his father, to this place, where we find him thus prosecuted. We grant he wore a sword, both in the town and out of town, but never employed it against the Parliament.

Going once out of this city, he light upon, or was rather light upon by some soldiers of the Parliament. He refused the exchange, and was constrained to live there.

He that dwells in Mesech,* must keep company with such; yet Mr. Moore was pleased sometimes to keep him company. I shall reserve my examination, as to matter of law, till afterwards.

He was but fourteen years old when the war began. I must crave Mr. Moore's pardon to reflect a little upon him, to disable his testimony. He was born in October 25.

Mr. Thomas Streete. About the year 41 or 42, he went to Oxford. He came from Oxford in 44, his father was dead before. His father and mother made him executor. He left Oxford, as I have been informed, because he would not take up arms there. I have inquired of two hundred that never heard he was a soldier.

Mr. Purdo. I never heard that ever he was in arms against the Parliament.

* *Ps.* cxx. 5. "Wo is me, that I sojourn in Mesech."

Mr. George Streete, his brother. I have seen money disposed of that my brother had given to the Parliament soldiers. He procured me a horse and furnished me with arms the year before the Scots came to Worcester, and said that he would assist me. He said, he would not come nigh that party that came to Worcester, and advised me not to come near them; for, he said, all that came to them would be proceeded against as traitors.

Another witness. I have known him from his cradle, and never knew him, nor heard of him, that he was in arms. I have been often in his company and never heard him swear an oath.

Mr. Moore preached Job 27 last verse, and declared that the people should clap their hands and hiss at them. They were gone out like the snuff of a candle. Another witness said the same that the other said of the minister, clap your hands, &c.

Mr. Finch. Take notice of this only; that he was always a person well affected to the present government. All our witnesses have been in arms for the Parliament.

Mr. Moore, after a long pause, of his own accord, explained that he did preach on that text.

I was inciting all persons to be faithful to their trust, else God would cast them out; but I named not the Parliament. There are some worthy persons in this assembly that heard me.

Richard Hodgkins. Mr. Streete sent me to Mr. Moore, who said, if Mr. Streete stand, I wish I had known two days since, before I was otherwise engaged. I would have engaged all my friends, but rather than be a hindrance to him, I will be out of town that day.

Mr. ———*. Mr. Streete sent me to Captain Collins. He said he would not appear against any townsman; but would take his horse and go out of town rather than hinder him, and for aught he understood, Captain Collins did well approve of his standing.

Mr. Finch produced the certificates; but Mr. Latham excepted that the House would not take that for evidence which would not be accepted in any court.

* Blank in the MS.

Mr. Finch. It is but a concurring testimony to what Captain Collins has said.

Mr. Latham. You will not accept of paper evidence against that, *viva voce.*

*Mr. Knightley.* The evidence you take here must either be *viva voce*, or upon record. I would not, for danger of the precedent, accept of paper certificates.

Mr. Finch. I am content to wave it. A petition of three hundred against a petition of thirty-five, so we have *vox populi* along with us.

The witnesses are angry, and partakers of the charge. I hope the testimony of one godly person will not carry all with you. We have offered you something to prove him to be an eager witness.

After Mr. Streete's being at Oxford, he retires to a garrison for safeguard of his estate.

A man then,* to save his sustenance and estate, may be found in evil company, and not be guilty.

How could a man demean himself more innocently. He joins his devotion with the ministers that were praying for you; comes with a sword, and therefore must be an enemy.

We cannot fear that a member heard by his peers, shall not be found innocent.

We cannot pray other than that we may be dismissed with costs, if you would discourage such as inform without cause; that it may not only be exemplary in our acquittal, but in our reparation.

Mr. Latham. This gentleman hath not only done the part of an advocate, but of an exquisite orator,† and, under his pardon, a judge too, to direct you what to do.

* It appears that the counsel had referred to several law-cases, but the report is too imperfect to be understood.

† It is to be regretted, that this report has preserved nothing of the *orator*. He was "a person," says *Wood*, "of so eloquent and fluent speech, and of so great sapience, that he was usually styled the English Roscius, and the English Cicero." *Athen. Oxon.* (1692,) ii. 540.

Bishop Burnet, on "Finch's character," says, "he was long much admired for his eloquence; but it was laboured and affected, and he saw

I hope you will not discourage persons that complain to you, for the advantage of the public.

We are before you, as the proper judges.

If they had matter, they would have laid aside their deviations. I submit it, if it be not as full a proof as can be.

True, by the Act of Oblivion, they are pardoned, but it is your law in being that does disenable; viz. the Petition and Advice, and an Act of the Long Parliament.

The proof is as full as can be expected, unless we should rake amongst those that have been your enemies.

We have proved him several times in arms.

An exchange is not usually offered for an adversary, but for such as they know to be a friend.

It is notoriously known that no man durst wear a sword in a garrison, but such as was a friend. He was seventeen years old at Edgehill fight; and twenty years, when at Worcester. He might at that age have done as great an offence, and been punished as highly as if double his age.

As to the discharging the musquet, if he had not been a friend to the garrison, he durst not have said so to a soldier.

The fact is plainly proved, to make him incapable.

For that of swearing. It is proved by godly men he had fair admonition *volenti non fit injuria.* He may blame himself.

The reflection upon the minister must needs be the height of envy and malice, and does not abate his testimony. The person for all the reflection may go home as clear as he came hither.

The evidence being thus summed up on both sides. The counsel, witnesses, and Mr. Streete withdrew.

*Lieutenant-general Ludlow* moved against what Mr. Onslow had moved that it may be, of what Mr. Moore had said in his sermon something might be true. This might have been forborne; such a reflection was ill said before strangers.

it as much despised before he died." The Bishop adds: "he was too eloquent on the Bench, in the House of Lords, and in common conversation." *Own Times*, i. 365.

*Sir Walter Earle.* I never saw such disorder at a Committee.

*Sir Arthur Haslerigge.* I move that we proceed no further in this business, other than to report the matter of fact to the House. I wish the Chairman to read his notes, and any member to take his examination, and the state of the case being agreed to, report it so to the House.

He undertook to state it, but mistook in many things.

*Mr. Goodrick* and *Mr. Knightley*, and other good friends of Mr. Streete corrected him.

I came away at seven. Query—what became of the business? I suppose the Chairman will report the whole matter.

*Mr. Bodurda* moved for a Sub-Committee.

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*Wednesday, February* 23, 1658-9.

I came in late, and the Duke of Buckingham had been at the bar according to order of the House.* In the *Journals* thus:

The House being informed that, in pursuance of the order of this House, of Monday last, the Duke of Buckingham attended to make his engagement to this House.

He was called in, and was brought to the bar by the Serjeant-at-arms, standing by him, without the bar, and by his keeper, a servant to the governor of Windsor Castle, coming with him into the House.

*Mr. Speaker* acquainted the Duke, that a Petition having been delivered from him to this House on Monday last, by a person of honour, one of the members thereof, and nearly related to him; the House had taken into a due consideration the Duke's demerits, which had been very great to this Commonwealth; but had overbalanced them with the high merit of his relations; and of their goodness had ordered, that, upon his own engagement, upon his honour, and of the Lord Fairfax in twenty thousand pounds, that he should not abet

* See *supra*, pp. 370, 375.

any, the enemies of this Commonwealth, either at home or abroad, he should have his enlargement; which engagement they now expected from him.

The Duke, standing at the bar, said, he accounted it his great happiness to come before this assembly; and that, in pursuance, and, according to the order of this House, he did here now engage himself to this House, upon his honour, to demean himself peaceably and quietly, and not to join with, or abet, or have any correspondence with, any the enemies of this Commonwealth, either at home or abroad, for the future.

And further, gave the House his most humble thanks for their high favour towards him; and professed he should be ready to lay down his life and fortune for their service.

After the Duke's engagement, made as before, he was commanded to withdraw, and withdrew accordingly.

Resolved, &c. That George Duke of Buckingham, upon this his engagement upon his honour, made to this House this day at the bar, be forthwith freed and discharged from the imprisonment and restraint he is now under.*

*Mr. Speaker* acquainted the House with an abuse offered to Major-general Packer on the highway.

*Major-general Packer.* As I was going home on Saturday night, a gentleman, being drunk, switched my horse and then myself. I was content to pass on the road with the abuse, till I came to a town and called for a constable.

He fell upon Captain Gladman, who was in my company, and cut him in the hat, and had killed him if help had not been made.

A rude ranting Cavalier swore "God damn him," often. He was one of the King's knights. He and his complices have boasted much of this. I chose rather to show my valour

* I know not if it were any recollection of the lenity thus discovered in this short day of their power, by these anti-episcopalians, which induced the Duke of Buckingham, on a mighty reverse of fortunes, to move for "leave to bring in a Bill of indulgence to all Protestant dissenters." See "The Duke of Buckingham's Speech in the House of Lords, Nov. 16, 1675, for a Toleration." *Genuine Works*, (1752,) pp. 164, 165.

in another way. The person is Mr. Henry, *alias* Sir Henry Wroth*.

*Mr. Reynolds.* You have had a fair evidence from your member, and it will be enough for you to proceed against him as a delinquent.

I would have the worthy member have a reprehension for concealing this information from you: for it seems, if he had but held his tongue when he was sober, he had never troubled him. I would have no member to keep any thing in his pocket, not an hour, of this nature.

Resolved, that Mr. Henry Wroth be forthwith sent for as a delinquent, and that he be brought to the bar of this House by the Serjeant-at-arms.

The order of the day was read, then went on the debate, touching the business of the Sound.

*Mr. Topham*, (Alderman of York). I lived in the eastern parts thirty years. There are many oppressions upon our merchants. The Spaniards were always plotting to grasp the trade, and the Spanish commanders rule all there.

Sir Thomas Roe† demanded of us the merchants, which

* "Of Durans, in the parish of Enfield, Middlesex." *Journals.*

† This statesman, who possessed both literary and diplomatic talents, was first employed by Prince Henry, in 1604, to attempt discoveries in America. In 1614, he was sent Ambassador to the Great Mogul, of whose court and country, where he spent four years, (and greatly advanced the interests of the then inconsiderable East India Company,) his Chaplain, Edward Terry, published an account, which was reprinted, 1777. From 1621 to 1628, he was employed on an embassy to Turkey, whence he brought some valuable Greek and Oriental MSS., as presents to the Bodleian Library, and the celebrated Alexandrian MS. from the Patriarch Cyril to Charles I. "The Negotiations of Sir Thomas Roe at the Ottoman Porte," were published from his MSS. in 1740, by the "Society for promoting learning."

His next mission, (during which, no doubt, Alderman Topham had met with him,) was "in 1629, when he was sent to mediate a peace between the kings of Sweden and Poland." *Howell*, in a letter "to the Earl of Bristol, April 23, 1630," speaking of Gustavus Adolphus after "the battle of Leipsic," says: "upon which victory the King sent Sir Thomas Roe a present of 2000*l.* and in his letter calls him his *strenuum consultorem*, he being one of the first who advised him to this German

might be the best way for the good of our own nation. The King of Denmark hath dealt treacherously with England. He hath been always plotting against us, and ever our enemy. We pay more taxes than any other nation. He kept up our 100th penny, then doubled it, then took four times as much. In wars between us and the King,† he seized all our ships, pretending order from the King.

He promised us protection if we would come into his harbour, and then seized on our ships. True, the merchants got satisfaction, but the land never got any; though it cost us a million.

Two masters of Hull were at the Baltic, in October last, being laden with corn. One of them carried a packet from the King of Sweden, and brought one back again. He affirmed that the King offered, if his Highness of England would but lend him twenty frigates, he would deposit in our hands Elsinore* Castle, for his security, and I believe we might have our own terms. Nothing under heaven concerns the English so much as that channel. Let us plant our ships in time there, and we have advantage enough of the Hollander.

All that is done in this House is carried abroad, all the world over. My motion is that you presently join your assistance to Sweden.

*Captain Whalley.* I hope this House will think it necessary to send a fleet to cover our interest in the Sound. I shall not speak of the difference between the princes; but we are the fittest umpires. The Hollander will use harder arguments.

war, after he had made peace between him and the Polander." *Epistolæ Ho-Elianæ*, (1754,) p. 228.

Sir Thomas Roe, who died in 1644, aged 64, was M. P. for Oxford University, in the Long Parliament. His colleague was John Selden: but their paths soon diverged; for he took the Covenant, while Sir Thomas Roe, a few months before his decease, retired to Oxford to join what the King unpolitely called "his mungrel Parliament." See *supra*, p. 234, *note*.

* See *supra*, p. 379, *note*.

† Charles I.

I am jealous of that neighbour of ours, because he is a rival at our trade. His sending 4000 soldiers* is very commendable. The preparation of the Dutch seems to tell you what you are to do. It will be necessary that you be included in the treaty. If there be a war, will it not be necessary that you have a fleet to secure your interest there and guard your merchants?

You have another potent enemy, Spain.

My motion is, that you recommend the care of this to his Highness and the Council, and make what *salvo* you please for the militia; lest we suffer by a public enemy, while we are over eagerly jealous over one another about our interests at home.

*Mr.* ———.† We are not upon a business of war, as I apprehend it. The object of this design has a great deal of glory, and honour, and bounty in it, and it is but just when the ball of contention is thrown, that we see for a share of it. If this be not well looked to, it will diminish all trade.

The wisdom of prevention is always best, at the latter end. I apprehend it not that it concludes the business of your militia. I would have it, to prevent delay, recommended to his Highness; it being, in itself, both just, honourable, and profitable.

*Sir Robert Goodwin.* Our wealth increaseth not. The bodies of our men increase not. It will ask money. I know not how it will rise. It is not good to discontent the people at this time.

Let us consider well how we engage between these two Protestant princes; unless to make peace. I would have us well satisfied of the state of the quarrel. The justice of the war is first to be considered and made out. I move to endeavour a reconciliation between the two Protestant princes.

*Major-general Kelsey.* Time will not admit of debate, to examine the grounds of the quarrel, for, before we can be certified of the state of affairs, as to the justness of the quarrel,

* See *supra*, pp. 383.

† Blank in the MS.

the point will be determined, and no place left for debate. It is of greater consequence than we are aware of, to the sale of our commodities and the increase of our navigation.

If we take not this opportunity, we destroy our trade. Our wool and cloth are vented this way, and we have a return of cordage, &c. If that trade be taken from us, we cannot subsist. All our trade to all other parts of the world will decay. Our rivals will be, inevitably, our masters. They not long since would have sent us white paper to write what we pleased. To them we must now send white paper to write what they please upon. Two kingdoms and the Commonwealth of Holland are very much concerned in this quarrel. Thus there is a combination of several enemies against the King of Sweden, and he hath none to stand by him, in this exigency and strait. Unless we assist him he is undone. It will either force him to a mean compliance or else utterly destroy him.

If we had to do only with the Dane and Swede, the thing were not very considerable, but the Dutch are most in our eye, and we most in theirs. The Dane is in that condition, that all his confederates can do him no good, without the assistance of the Dutch. If so, it need not be much insisted on, what the inference will be. It matters not whether the Swede or Dane have it.

You showed the greatest favour to the Dutch in the peace, that ever was. You took no advantages against him. He has ever since sought all advantages against you.

Therefore it much concerns you to the being and well being of this nation to be as expeditious in this business as you possibly can.

Your life lies at stake. A great charge is objected. This is inevitable, and no way to prevent a greater charge but by expedition in this business.

As to the objection of a war with Holland. There is no other way under heaven to prevent that war, than by sending this fleet into the Sound. They have experience of your strength at sea. But if they get the Sound into their hands, you must not expect any freedom, but what you make with the sword.

We may by this make peace between the two princes that it may be in the hands of neither of them wholly. We should have our eye upon our own present interest. If it should please God to divert the councils in this great business, the consequence may be dangerous.

It will be no granting the militia, if we make his Highness the Instrument. I would have no delay in this business.

*Sir William D'Oyley.* I came with some prejudice to this debate, upon the principle of good husbandry; but the debate has made me your convert. I would have this business sent back to his Highness, and twenty frigates sent out presently; and let the Commissioners of Admiralty prepare farther assistances.

*Mr. Knightley.* It is for your honour to be active at sea. It will make the Dutch put in their horns.

There is no danger of granting the militia. We make a fair claim to it. It is for our honour not to slip this opportunity.

*Sir Henry Vane.* I shall only speak to the manner of your proceeding, and to save time. The end of Mr. Secretary's report was to have a powerful navy at sea this summer. That, I think, is every man's sense, and with expedition too.

I believe we all agree that this year we should have a powerful well-manned fleet at sea; but I would not have such a general vote, lest more may be carried than is intended, and we grant what we know not.

1. Here is the expenditure of a million of money presented to you, and you draw that debt upon you. I hope your Committee, touching the accounts, will find out a way that your revenue already settled, being well managed, will defray this charge; and not involve us further, before we see what our affairs are. It is propounded that you have a very considerable navy at sea, 15,000 men. I hope you will have money before you, to furnish them.

2. By this very vote you grant away your approbation, if not disposal of your chief commanders at sea, which I suppose is your right. It is very fit you should know who they are and

approve of them, which was never denied you. You, also, give up the right of the militia. If you consent to give away that which is in your disposal, you do not do prudentially. ..

3. In referring this to his Highness and the council, do not you take it for granted that there is a council in being whose names you yet know not, and confirm them all in a lump.

I would have you first resolve that for the safety of trade of this nation, &c. You will have 15,000 men raised, and appoint a Committee to consult with the Commissioners of the Navy and Admiralty, how this may be put in a way with the least charge; and to report the state of this expedition to the House.

*Mr. Trevor.* That the militia should not be disposed of without your consent is a right, I suppose, you will never part with. His Highness does not seem to demand it of you, by his submitting this to you. He that asks authority, assents that he of whom it is demanded, hath it. I doubt the present juncture of affairs will not admit of a delay. The opportunities may be lost in a few days. All considerations of officers of Navy and council, and militia, are all reserved entire unto you. Your men and officers are all ready to go out. They are now all aboard, or very near it. I would have all things left clear, and that you make this reference to his Highness and council.

*Sir Arthur Haslerigge.* I am sorry to hear this pressing upon you of the word necessity. It caused shipmoney. Oh! woful, lamentable necessity. Oh, Sir, why is so much put upon us? I love not to see you overwitted. You are not to be overwitted. Why were we not called five months since? Why was not this matter brought in before the Bill of Recognition? You are owning the single person, and his council by this means. Must we own the council, too, before we know them. Have you limited his council?

The gentleman in the corner gave me light. I hope we shall have a navy, as great as we can bear at this time, and with all expedition. He tells me that may be done, and there is money too to be had; he is quick-sighted, I know it very well. When our affairs, as to the Navy, were such as we

could not turn ourselves unto them, did we not turn our eyes upon that gentleman, by whose providence it was so excellently managed.* We turned out all our army by a self-denying ordinance.† Oh, Sir, I would to God we had a self-denying vote now. I think we should give better advice than we now do.

I would have no fleet sent out, till the officers be approved on by you, and the whole business.

Bound your single person, and my soul shall go along with you. Let us not be put to fight it over again and to make acts to bound the council table. I know not this council, nor what are their names, and shall never give my consent to their stipends. I would have as potent a fleet forthwith set out, but would have this referred to the Commissioners of the Navy, and to have inspection into our treasures by your Committee of Accounts. Search your treasures. This is weak but faithful council. For my part I shall get nought by confusion. I would not have it. I apprehend it not prudent to reflect upon those that you are in amity with. I would have a very great fleet.

I neither think it prudence you should tell what you mean to do with the fleet, neither would I have you give it out of your hands at once, to you do not know where. Sir, we have enough here within ourselves to carry on this work. We have done it, when we were not so wise as we now are.

First put it that you will have a very potent fleet at sea, and refer it to your Committee of Accounts.

* See vol. ii. pp. 396, 397.

† This ordinance first passed the Commons, December 19, 1644, though not without opposition, especially from *Whitlock*, (see *Memorials*, p. 119,) when it was rejected by the Lords, after several conferences. At length, April 3, 1645, the Self-denying Ordinance passed the Lords.

It imported, according to *Rushworth*, 1. "A general discharge of the Members of both Houses, from all offices, military and civil, conferred on any of them by either House, since November 20, 1640. 2. That the benefit of all offices, either military or judicial, hereafter to be granted by either House, shall be accounted for to the Parliament, and the officer allowed a competent salary." *Hist. Col.* (1708,) v. 517. See vol. ii. p. 449, *note* *.

*Mr. Bodurda.* I believe the Committee of Accounts have enough to do. You must appoint another Committee, and that must report. This will spend time.

One part of the light I received from the corner was matter of charge. If there be so much remaining upon accounts, is not this good payment.

If your officers should be called back again, that happily have received your imprest money, that will give you new imprest money. I am afraid there is much of that kind of reason in this debate, as if we were in time of peace.

It ought to be our greatest consideration to keep out that family and line.* We had better be at the bottom of the sea; nay, they that would bring them in, had better be at the bottom of the sea.

The late king had not so faithful an ally as Denmark. Holland the nursery of arms, was at that time against you. They are, at this time, confederates with the house of Austria, your great and potent enemy.

Let us be ingenuous in this business and hearken to nought that may be matter of delay. Refer it to his Highness and the Council, to make a vigorous prosecution of sending a fleet to cover your just interest in the Sound.

I suppose the commanders will come hither to be approved by you: that will not ask you much debate.

*Mr. Onslow.* The first question should be, that a considerable fleet be made ready, suitable to the preparation of other nations, for safety and preservation of the commerce of this Commonwealth.

I move that a very considerable navy be forthwith provided and put to sea, for the safety of this Commonwealth and the preservation of the trade and commerce thereof.†

*Mr. Reynolds* and others moved, that the word, commerce, be left out.

* See *supra*, p. 276, and this *Anti-Stuart* in 1660, p. 136, *note*.

† "Onslow seconds Sir Arthur's motion, as tending to a conclusion of the debate. Never let us sound into the justice of the quarrel, but find a necessity to provide a good navy." *Goddard MS.* p. 225.

*Sir Henry Vane.* I move that it stand. It will best satisfy the merchants, and was always the ground of tonnage and poundage.

*Mr. Swinfen.* I move to leave out the word, very; it signifies nought.

*Mr. Fowell.* I would have the word, very, stand.

*Mr. Knightley.* The word, very, will not add a man: nor is it material to have the word, commerce, for you intend that your fleet should not be as dead walls, but for the preservation of commerce.

But, in the end of the debate it was put to the question, and

Resolved *ut supra, in ipsissimis verbis*, without any alteration, and *nemine contradicente.*

*Sir William Wheeler.* I move that the care of this be referred to his Highness and the Council.* I have always observed, that these jealousies have been easily passed over.

*Sir Henry Vane.* It is not a vote that will set the fleet to sea. There is an estimate before you of 15,000 men. Take that into consideration, how they shall be paid and who shall command them.

I would have this vote made effectual. Therefore refer it to your Committe of Accounts, to examine, if the fleet already provided, or the money already taxed, will answer this business; and I hope you will have the officers before you, at least, to approve of them.

*Mr. Bulkeley.* I move that you would not let your strength be known, or examine what number is fit; but to refer it back to his Highness and the Council.

*Lord Lambert.* I move to appoint a Committee to prepare

* "Although some moved that it may be sent out only for guarding the narrow sea, and for maintenance of trade, with instructions from the Protector, and to appoint a Committee to attend his Highness and the Ambassadors to be heard, lest if we should go to part States, it might happen to us as to a sober man that attempts to part two drunkards. He is often fallen upon by both, and comes off with the greatest loss." *Goddard MS.* p. 225.

this business, that the world may see the Parliament of England are concerned in it. Let your Committee be declared, in number, five or six, not exceeding seven, that may wait upon his Highness, to consider of a way how to carry on this business.

*Mr. Knightley.* I second that motion, that a Committee of seven may wait upon his Highness and advise with him, to carry on this business, and to join with those of the council that he shall appoint to be employed in this service; and I would be as free as any, if there be a necessity.

*Colonel Clark.* The generality of the vote will not do your business. There must be some more particulars in your resolution.

You have resolved a very considerable navy, but what you will do with it, *non constat.* Fifteen thousand men were desired by his late Highness, and a fleet considerable, either for the affairs of France, or for any other service. Besides this fleet, you have other considerable navies, to guard your seas, and the trade in the straits. I therefore desire you would resolve something more in particular, of this affair.

Your neighbours, the Dutch, are not ashamed to publish, that they are preparing to send a fleet for assistance of the King of Denmark. Why should we fear to declare that we are preparing a fleet for preservation of our interest in the Baltic seas.

I am sorry this business has not been made known to the House before now. It is now before you, and your navy is already in great forwardness. I pray you, for the concernments of England, that you would declare that you will send a considerable fleet to secure your interest in the Baltic seas. If you lose opportunities, they will never be recovered; for if you should put all the vigour upon it that this House could, I fear it would not answer your expectation of the affair.

*Sir Henry Vane.* So far as I was able to calculate, I told you I thought that the excise and customs already settled, would bear this charge without any other tax. I did not tell you that any money was ready.

That Committee has work enough, you must appoint another Committee.

*Mr. Solicitor-general.* It is not for your service at present to interpose with his Highness, now when the navy is ready for action. I would have some of this House appointed to attend his Highness with this vote, and that you desire his care in managing the business. There is another House in the constitution.

*Mr. Turner.* I move to know whether you will look upon this expedition as an additional charge; or that the present provision will carry it on.

*Sir Henry Vane.* It concerns you exceedingly to look about you. The question will inevitably involve you in the business of the militia, and negativé voice, and the other House. This House by silence cannot suffer; by a vote they may.

I suppose his Highness and Council (though you be silent in it) will go on with the business. There is nought to hinder but this fleet shall be at sea. But to send a Committee to his Highness, or to the Lords, you will put entanglements upon you. It is intended, I suppose, to go on, though you say nought; and the less you say the better.*

*Mr. Trevor.* I desire this expedition may go on. Therefore make no reference that may retard it. A Committee will retard it, and the opportunity is lost. If I had thought the business would go on without you, I should not have troubled you. It is now before you to give order how this fleet shall go on. I would therefore have it referred to his Highness, barely, without the Council.

*Colonel White.* If your fleet were ready to go out, it would signify nought, unless you agree how it shall be disposed on.

I move to have a Committee appointed, to advise with his Highness, to carry on this business.

* "Sir H. Vane is for doing and declaring nothing, nor referring it to any, but to leave it in the hands of those where it now is, and as it is." *Goddard MS.* pp. 226, 227.

The House rose at two o'clock, and adjourned the debate till to-morrow,* eight o'clock, nothing to intervene.

The Committee of Grievances sat upon the business of Major Portman†.

*Colonel Terrill* in the chair.

Major Portman was brought to the bar, and Sir John Barkstead‡ sent in the warrant for his imprisonment by a member; but the Committee would not be satisfied till Sir John Barkstead came himself to the bar. Colonel Terrill would not call him Lord Barkstead. It was said that it was not fit for a Lord of the other House to be a gaoler.

He produced a warrant from his Highness for Portman's commitment, and also a letter all writ with his Highness's own hand, to him directed, desiring him to seize Major-general Harrison,§ Mr. Feak, Rogers, Portman, Carew, and another|| named in the letter; and said further, "and other

* "So the question as Mr. Onslow stated it, was voted, and what should be farther done, in pursuance of that vote, was adjourned over to the next day, to be the subject of that debate." *Goddard MS.* p. 227.

† See *supra*, pp. 306, 307.

‡ Lieutenant of the Tower. See *supra*, p. 79. He thus writes to Secretary Thurloe:—

"Feb. 22, 1658-9. The last night I received an order from the Grand Committee of Parliament, for Grievances, &c., to bring to-morrow the body of Mr. John Portman to that Committee, together with the causes of his commitment and detainer; and according to that order, I have this day received a copy of Mr. Portman's petition, and am to give an answer to the Committee concerning the particular complaint relating to myself; in which I am confident I cannot be charged with any thing but keeping close to my warrant: the copy of which petition, as also of the warrant for his commitment, &c., I have herein enclosed.

"I shall have the prisoner there, as required, and humbly conceive it convenient Mr. Attorney may have notice to be then at the Committee." See "Thurloe State Papers," vii. 620.

§ "Feb. 4, 1657-8. Divers were imprisoned," says *Whitlock*, "upon the new plot, and the Protector and his Council were busie in the examinations concerning it; and Thurloe did them good service. Major-general Harrison was deep in it. Feb. 12. Divers seditious books taken, of the conspirators." *Memorials*, (1732,) p. 673.

|| Probably Courtney. On Feak and Rogers, see vol. i. p. 350.

"Feb. 4, 1657-8. It is observable that Major-general Harrison and

eminent Fifth Monarchy men." The latter words were highly excepted against by the Committee, and the general sense was that it was a high breach of the liberties of the subject, and,

Resolved, that the imprisonment of Mr. Portman was unjust and illegal.*

Resolved, that the debate touching the bounds and powers of another House, appointed to be taken up to-morrow morning, by the order made yesterday, be further adjourned until

his wife, Mr. John Carew, and Major Courtney, though formerly supposed to be persons a story or two above ordinances, being desirous to enter into the way of the rebaptized, have all of them, sometime since the beginning of this frosty weather, been dipped, notwithstanding the bitterness of the season.

"And it is further observable, that when the said Major Courtney was apprehended, (who, with Mr. Rogers, the minister, &c., now stand committed to the Tower,) there were found in his lodgings several dangerous printed pamphlets, divers of which were enclosed in letters, directed to several persons in the country; being the very same pamphlets with those which have lately been scattered up and down, among the soldiery and elsewhere." *Mercurius Politicus*, No. 402, p. 294. See vol. ii. p. 134, *note* †, and p. 312.

* Barkstead to Secretary Thurloe. "Feb. 24, 1658-9. I believe you have had an account, ere this, what was the sense of the Grand Committee yesterday, upon the bringing of Portman thither. Notwithstanding my producing my Lord Protector's letter, under his Highness's owne hand, and a full warrant (as I apprehended) some seeme to dislike my showing that letter; but such was my affection and faithfulness to his Highness's commands, I did not imagine the doing that would have reflected upon his honour, which I esteemed my great encouragement. I heartily wish this occasion had been prevented, either by Portman's discharge before, or such warrant given for his detainer, as might have justified me more.

"Sir, I am confident I shall be brought again upon the stage, by several prisoners in my custody. These committed by the warrants enclosed, I suppose will be forwardest, and therefore humbly desire your honour will take it into consideration, that as I have kept close in obedience, soe I may not be left lyable to the malice of particular men. I shall not doubt of your tenderness herein.

"I suppose the report touching Portman will be made to-morrow morning to the House." See "Thurloe State Papers," vii. 620.

Friday morning, next; and then proceeded in according to the former order.

Mr. Secretary Thurloe being chosen to serve as a member of this present Parliament for the University of Cambridge, for Wisbeach, and for Huntingdon, declared that he made choice to serve for the University of Cambridge.

Ordered new writs to issue for Huntingdon and Wisbeach.

The House being informed that Mr. Anthony Nicholl, who was returned to serve for Bossiny, in Cornwall, was lately dead, it was ordered that a new writ do issue for electing a member in his place.

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*Thursday, February, 24, 1658-9.*

*Mr. Speaker* took the chair at nine.

Mr. Cooper prayed.

Query, *per* diurnal* what passed before, for I went out into the hall for half-an-hour, and when I came in again

The order of the day was read. According to the order made yesterday, the House took into consideration the matters then debated on.†

* Nothing appears on the *Journals*, except orders for new writs in the cases of two members, who had each been chosen for two boroughs.

† "Thursday, Feb. 24. This being the day to which the business of the Sound was adjourned, many questions were proposed for debate.

"1. Whether this House should, at this time, give the advice for the sending the navy of the Commonwealth, now prepared, to the Baltic seas.

"2. Whether the fleet shall be disposed by advice and direction of this House, or by the single person, or any other without doors.

"3. That this fleet be disposed of by his Highness, by advice of this House.

"4. Unless we see cause to send a considerable fleet into the Baltic, * * * * * of the order or rate the other day; for if by sending it thither, a new war should break out that might not be for our service; but if it be only to umpire affairs, there may be something in it.

"5. Unless it should be disagreed by the single person and the Parliament." *Goddard MS.* p. 227.

*Sir Walter Earle.* I move that the Speaker collect the debate, and put us in a way to come to a question.

*Sir Henry Vane.* The committing this business to his Highness will at once give away your militia, as to the naval part. The next step will be your militia, at land, and then you are concluded in your claim to the militia.

I would have a fair question touching the sending a fleet to secure the Baltic sea.

*Mr. Attorney-general* and *Mr. Bacon* moved that it was no complicated question, nor a granting away the militia.

*Mr. Neville.* Your debate only relates to sending a part of your fleet to the Baltic sea. Otherwise you give away the merit of the business at once.

*Captain Baynes.* This sending to the Baltic sea tends to a breach of peace with Holland. For defence we are always prepared. If anything of offence be intended, it is fit we should understand it.

Such actions as these are called expeditions, because expedition is the life of action. I except against the word "advise," in the question, I know not whom we shall advise with. The militia is in you. I would have the word, declare or direct. Because this House must pay them, it is, therefore, fit they should dispose of them.

I move for a Committee of this House to dispose of this business.

*Mr. Onslow.* I see we are at a loss for want of being open faced in this debate. Make this the matter of your debate, whether this House shall dispose of this fleet, or his Highness. That will clear the matter.

*Mr. Attorney of the Duchy.* Another question is more proper, that the fleet be disposed of by the single person; by the advice of this House. That will exclude neither this House nor the single person.

*Mr. Onslow* agreed with that motion.

*Sir Henry Vane.* The greatest pinch in this debate is, whether you will have a war or no, and whether, as the state of the report is, and the state of your affairs are, you will think fit, at this time, to send a fleet.

*Mr. Bampfield.* That question will draw the House into many considerations. It is not fit to debate all those things in this House. This will lead you to a conclusion, that the power of sending this fleet is wholly in this House. Then, the officers must be agreed on, here. This will lead you inevitably into debate, whether the single person or the other House have any, or what part of this power. You will insensibly creep into the other debate.

Make your question, that it shall be disposed on by the single person and the Parliament. Till you come to your constitution, I see you are gravelled in every debate. Whatever you propound, the constitution will, inevitably, come in upon you.

The business of sending a fleet to the Baltic Sea was nearer in the debate yesterday.

I found a general inclination that the words in the question had been only, as to referring the preparing of the fleet to the single person. Then it would not stick; but this word, disposing, say some, seems to give away the question.

*Sir Arthur Haslerigge.* You cannot proceed other than upon the report, as Sir Henry Vane moved.

I agree we are in a perplexity, and likely to be so, till we resolve our constitution.

For husbanding your time, for which we must answer, for we are all mortal, refer it to your Commissioners of the Navy, to inquire into the preparation, and report it to you.

I would have us go plainly, and like right Englishmen to debate this.

Let us go to the proper business of the day, to debate the other House. We die away apace. Let us settle the greatest things, in our time, that we can.

*Sir Thomas Wroth.* We discover rocks every day. If we must sail by rocks, we were better to do like wise pilots, that is, avoid if we can, or hazard them as little as we can.

The proper debate, in my opinion, is about the other House. Another House or no House.

Men are born to be subjects and not to be slaves. Either

let us be slaves or freemen. The English are easy to be governed, and they love it; but it must be as freemen and not as slaves.

The greatest questions before us, and fittest first to be resolved, are the negative voice, and the militia, both by sea and land.

I therefore move to waive this question, till that be determined. Sure we are more than mere bankers, called together to raise monies, and to put them into bottomless bags.

First debate your constitution.

*Captain Hatsell.* You ordered to debate this, *de die, in diem.* It is told you, the sun rises high. This will admit of no delay. If you enter into these considerations, I know not when you will end.*

* A few days before this, "Mr. John Barwick," a spy in London for Charles Stuart, (see *supra*, p. 289, *note* †,) had thus communicated his collected information to "Sir Edward Hyde," afterwards Earl of Clarendon:—

"Feb. 16, 1658-9, late at night. The proceedings at Westminster are so full of distraction, that it is probable they will end in confusion. For the one party thinks the Protectorists cannot stand, and the other, that the Commonwealth cannot rise; and those that are indifferent men hope both may be true; and then the conclusion will be easy to foresee and foretell.

"To prevent this mischief, the Protector's party brought in a Bill, Jan. 31, for a Recognition of the Protector, wherein were some comprehensive phrases for the other House, the militia, and negative, voice; but now that it comes to scanning, it finds no small opposition.

"From their first meeting, the Commons have consisted of two extreme parties, (one for the Protector, the other for a Commonwealth,) and a moderate party between both; which being more or less moderate, as occasion serves, are able to cast the scales on which side they please; and this makes the foresight of things very obscure, though most men think it will end in a titular Protector, without either militia or negative voice, if he be so tame as to submit to it. The republicans are the lesser party, but are all speakers, zealous, diligent, [see *supra*, p. 232, *note*,] and have the better cause, admitting those common principles (which are not yet exploded,) by which they destroyed monarchy in the Long Parliament." See "Thurloe State Papers," vii. 615.

*Mr. Knightley.* I should be sorry that any power without doors, should, sitting the Parliament, dispose of any forces, without your advice.

It has been reported to you, of the preparation on the other side.

In 40,* the disposing of the militia was by your advice. The officers depended upon your allowance.

We are to advise what is for the good of his Highness and the nation, not, only to make him great.

If you think this gives away nought from you, I am not against it, with a preliminary vote to this purpose, that, sitting the Parliament, the disposing of the militia, by sea and land, is, wholly, in the Parliament.

*Colonel Parsons.* I rise up to second Mr. Knightley's motion, that, sitting the Parliament, the disposing of the forces, &c. is in the Parliament.

Make this preliminary vote, and then refer it to his Highness's disposal.

*Mr. Reynolds.* I move to the same purpose. Thus the rights of the people are not only asserted by votes. There is not only a claim made, but a possession along with it, which does strengthen the claim.

If we fall a raising of money, and leave it to the single person to spend it as he pleases, it is not reasonable. We did not so with Ireland.

We have not only a right in claim, but a possession and fruition of it. Let us come roundly to this question, as was moved before.

*Mr. Manley.* Remember the time, the constitution of the skies, what we have learned at school. Occasion is bald behind.

The question of authority and power at this time is not necessary. I am sure it is your proper business to advise; that excludes no person's right.

It is in vain to counsel at home, if forces be not abroad. I would have it the advice of this House to his Highness, to

* Perhaps in 1642. See vol. ii. p. 435, *note*.

proceed in such a way, for the best maintenance of your interest by sea, and not tell them whither you will go.

*Mr. Turner.* This has been done as to the general preparation, it being the duty of the single person to guard the sea. But this is a particular design, and it is said there will be matter of charge, a million of money. It is very needful that you should advise in this.

I would not have your debate so open, but refer it to a small Committee to attend and advise with his Highness about it. Whatever is debated here, is beyond sea in six days. By that time your Committee have considered of this business, you may, in the meantime, consider your constitution.

*Captain Baynes.* As the peace* was made without the House, the war might also have been made without it. It is fit you should have an account of all this, how your estate is with all your allies. But I would not have this now debated, but only go upon your vote that you will send out a fleet for the ends propounded.

This is a power which I suppose you will delegate, whether to his Highness and council, till you have considered them, or refer it only to his Highness and such persons as he shall advise with, or with the Commissioners of the Navy and Admiralty, who are all members. It is but on the defensive part that is propounded.

First assert your right to delegate, and then delegate. I would have it be asserted to be in this House, and not in the other House, unless it appear that they are equal contributors. I would have this to be part of the Bill.

*Sir Walter Earle.* If you proceed not in this, till all these things be determined, I doubt it will be too late. *Consuletur Roma*, &c. While you are consulting, the Sound will be gone, out of your power to recover.

*Colonel Gibbons.* *Sapiens incipit a fine;* consonant hereunto is your vote, to preserve your safety and commerce.

I conceive this House is fit to dispose of them, because

* With the Dutch, in 1654. See *supra*, p. 391, *note**.

they must pay them. To that purpose, I would have a Committee appointed by you, to dispose of this business. Content not yourselves with the bare declaring it your right, but do it by action.

*Major-general Kelsey.* Your vote will not answer your ends.

It was reported to you, that the Sound was in the eye of his Highness and the Council, which if once in the possession of another, you are ruined and undone.

I understand not much difference of charge between having forty ships in the Downs or in the Sound. You have voted such a fleet to be prepared. Whether will it be more advisable to have them in a place where they may do you service? It is not a fleet in the Downs, or on the coast of England can do you any good; but to put yourselves in such a posture, as may break the design of your neighbours, which is to possess themselves of the Sound, and thereby become your masters.

It is true, we run the hazard of a war, if we go; but it is more obvious that we run a greater hazard if we do not go; and suffer the Dutch to possess themselves of the Sound. They will give laws to all the world, if they once get you under.

If you stay at home, the Danes are not beholden to you, nor the Swede neither. If the Dutch go to aid the Dane, they will have a good pledge for their assistance. They will save stakes which way soever the scales turn. You will certainly lose yours.

I hear all say, his Highness is a very wise, prudent, and innocent person. He will be very cautious in sending a fleet thither, while you leave it thus in the dark. Upon this general vote, he will do nothing without your advice, neither will any without these walls, as I suppose, dare to give him any advice to the contrary.

It is evident it will discourage the Swede, and encourage the Austrian faction.

It will be certainly effected, to bring over the Austrian

forces into Zealand. It is not enough to be triumphant in the Channel.

If I apprehended that referring the care of this to his Highness were giving away your militia, I should be as much against it as any man. I think nought less.

No more is given to his Highness by delegating this power, than if you did appoint a Committee, for you delegate them. Do you give away your power to any?

Two or three days are considerable. I doubt the time will be irrecoverable, unless the Providence of God prevent it. I would have this business speedily referred to his Highness, to take effectual course in it.

*Sir Arthur Haslerigge.* I rise with a sad heart to see worthy gentlemen that have been with us from the beginning, so differ from us in this business.

I am prudently tender of foreign war, and conscientiously tender of drinking blood. We are too much guilty of that already, unless it were better digested. I doubt God is angry with us. We are here in an island, or little world, and it is enough if we can preserve ourselves.

The law of nature directs us not to shed blood without just cause; but upon unavoidable necessity. If one will take my house from me, and will fight for it, I have a just cause to defend it. But if another man have a better hat than I, must I have it? If the Sound belong to the Dane, what have we to do with it, if it is the blessing of God that maketh rich, not the counsels or the wisdom of wicked persons? Is it our right? Can we fashion ourselves after the princes of the earth, and not expect to partake of their cup? Let us do like Christians. What success had we in going about to take away that which belonged to the King of Spain? God blasted that action, with the Dutch expense and dishonour, and disowned our seeking after the dominion of Spain, which was none of ours.

I confess it grieves my heart to consider what your predecessors did in voting the Spanish war, so costly and dishonourable to us.

It is our interest and our honour to redress and reconcile our neighbours.

It is said, we have our commodities from thence. It is true, we have so; but whoever has the Sound, we may have still the commodities for our money. The Dutch are resolved to defend the Dane, and I think they may. They go upon a just and honourable account, to assist an oppressed prince. He is a poor prince, and the Dutch in friendship with him. I hoped we should have sown in the spirit, not in the flesh.* I find nought of Jesus Christ in the bottom.

God Almighty would never have ordered a war with Canaan, but that they gave the first occasion of it.

Councils of men engage in war without inevitable cause; but I think we especially ought not to be drawn into it, upon any cause of denomination, or carnal ends.

It is a maxim in Parliament, that no war ought to be made, without our consent, because it is our purse, and our blood must maintain it.

'Ο Αντιχριστος is in every man's mouth, that it is against Antichrist, and for pulling down the Pope, for which we fight.† I do not know who that Antichrist is. However, I do not think that Antichrist must come down by the fleshly sword; it must be by another kind of weapon.

It is impossible to send a fleet, but a war must ensue. That we should be the catchers of the spoil is not Christian. Remember what Achan said.‡ God blessed the war with the Dutch, because we stood on a good footing. They began with us.§

Let the quarrel go as it will, we are safe, we are secure to defend ourselves. I hope there is not a man within these walls but will account English blood precious. We ought not, for any fleshly advantage, to buy domination with blood.

Set Christian rules aside, it is not suitable, as your affairs are now, to undertake this. Antichrist must not fall but by the spirit.

* See *Gal.* vi. 8.

† See *supra*, pp. 381, 382, *note*.

‡ *Joshua* vii. 20, 21.

§ See *supra*, p. 380, *note* *.

Put not this business out of your own hands. Choose your officers. I would have none to engage in a bloody war, or in the expense of millions of money, without your consent.

Sir, if our navy should miscarry, do we not lose all, to take princes', poor princes' possessions from them. Have we not enemies at home and abroad?

Will not God blast us? If God blast our navy, where then are we? If, by wicked courses, we should exasperate other princes abroad, how do we know that they may not unite to pour out all their forces upon you? How many discontented spirits there are.

Sir, there is a great deal of weakness in this their counsel that is given you. War ought to be very just, and undertaken upon godly principles and scripture grounds, which will no where justify the taking away another man's right. Let us make a war upon scripture principles, viz. defensive. Has not all the blood spent been held forth as upon reformation.

In order to your safety and preservation, I would have you command your Commissioners of the Navy and Admiralty to put your vote, the other day,* in execution. Thus put yourselves into such a posture, as that you may not be found naked to defend yourselves, when your enemies come upon you.

*Mr. Attorney-general.* It is your duty to collect the sense of the House, and if you do not put us into a way, we shall wander, *ad infinitum*. There is no danger of giving away the militia, by referring this business to his Highness.

*Sir John Lenthall.* I am as much against war as any man. Consider your charge. You have five armies abroad, besides that at home, and now going to send a sixth; now going upon 50,000*l.* pay behind, fifty weeks arrears, and this navy will be as big as any army. I find a great difficulty how they shall be paid. But this interest being at stake, I doubt if we suffer this to go away from us, all our reputation is gone.

You lose your cordage, &c. as was told you. Like good

* See *supra*, pp. 444, 445.

gamesters, if you will not play, stand by. I think it is fit to stand and look on. Calking, pitch, tar, sails, and mast, come from Norway. The Swede hath got considerable places, and he hath got all the tar in those places into his possession, and hath put such rates upon it, that we pay double the value for it. He buys up all, and sells to us as he pleaseth, and imposeth several hard things upon us, and hath engrossed all the tar trade.

As I shall never press you to make a great enemy too little, so I would not have you make a little enemy too great. If he shall get Copenhagen, he hath the largest extent of ground of any prince in Christendom. If he gets Copenhagen, Norway will soon fall into his hands; as easily as, when you have taken Westminster, Chelsea must yield, and then we lose all our masts too. However the case go, your interest will be out of doors.

A considerable navy is very fit; not to increase the Swede, nor diminish the Dane, nor irritate the Dutch, but to secure our own interest.

If you please, I would move to nominate a Committee of a few members of your own House to treat with his Highness about this, and I doubt not but by their advice, his Highness may manage this business with the like prudence and care as all see he has done hitherto; which may reconcile every part to the benefit of the whole.

*Mr. Speaker.* There are various debates for eight or nine propositions. (He repeated them all). It is doubted that some questions may involve that the matter of the militia might be preserved entire to you.

I shall propose it to you, whether, sitting the Parliament, the power of disposing the militia shall be in this House.

*Colonel Fielder.* I move to change the word House, and to say the Parliament, and I doubt not but it will be as unanimous as the vote yesterday.

*Serjeant Seys.* This previous vote will take away all grounds of jealousy. I would have the question be, that the militia be disposed by the single person, with the consent of

the two Houses, sitting the Parliament, and, then, that there shall be no no war undertaken, but by consent of Parliament.

*Mr. Neville.* I doubt this will lead into a long debate. The militia hath been in several hands according as the balance of government hath varied. It has sometimes been asserted to be in the King, sometimes in the Lords, sometimes in the Commons.

By the Petition and Advice the militia is entrusted in the Parliament, sitting the Parliament. I suppose you will consider where it is now. It is no where in the world by any law, for the Petition and Advice is out of doors.

I doubt the business of the Sound will hardly keep cold corked up, till you have considered these things, and settled the debate concerning the militia. I would have you, then, quite put this off at present.

Let it pass now and declare your sense, whether you think it fit to engage in this war, whether this fleet shall go into the Baltic sea, or whether they shall have your instructions along with them what to do.

*Mr. Higgons.* Before you go to another debate, resolve whether it shall be transmitted to his Highness, as was moved on Monday.

*Serjeant Maynard.* I am loth to offer my conception, being unfit to advise.

That which is desired is, that what we conclude may be in plain terms, and not doubtful, ambiguous and scrupulous. I was under some mourning to find the militia question at this time. The right of the militia, in this discourse, looked rather like a diversion, and seemed very wide from the matter.

Some spoke concerning the Dutch. I look upon it, there are many of them that wish us well; but, in general, they have trade for their great Diana, which hath made them forget the good they have received from us.

They have a readiness always to harm us. Your loss in the Spanish war has been by the hands of the Dutch. It is rather a Dutch war, under the Spaniard's name.

They sell their ships to the Spaniards, and their goods are

exposed to open sale in their markets. They fill their ships with men, and meet with Englishmen. If we are too weak, then they are Spanish; if too strong, Dutch. Two hundred and odd ships have been thus lost in a short time. More mischief is done by them, than by the Spanish. Such is their affection, and such their interest.

It is their interest to take away trade from the English. Our ships lie by the walls, and theirs ride. The whole trade, almost, of Christendom is come into their hands.

I think they love us well enough but for our trade. Yet their attempts have been set enough upon us, by making such preparations. We hear they are now setting out one-hundred-and-twenty sail, whereof ten are advisers, and as many fire-ships.

Is this preparation for naught? If it be for the Sound, that is not our business to engage in a war. But we are obliged in a proportionable measure. We shall not thereby design a war, but rather prevent it. I hope every good Christian prays against it. But, to take it in the general. If a war should fall out, let us send such persons well instructed, not to engage but upon good terms.

There is great odds between two ambassadors and twenty sail of ships. If you go weak, and creeping, and begging, you are like to do little good. Your forces must be as bold as theirs. If you send two ambassadors, and they one hundred sail, you will come home with rags. It is said, your ships will be of little use without cordage, and what if the Dutch will not sell? Truly, I think he will not, until he hath ruined you and your concernment. But admit we cannot have it at all, your ships must lie by the walls. They cannot ride without sails.

A Committee will but clog the business. You cannot give such certain instructions as any man can pursue, but, in general, we may. I hope we shall be careful of blood, but for fear of that, we must not put ourselves in danger of falling into greater.

I shall humbly conclude, that it may be referred to his Highness, my Lord Protector, to put your vote into effec-

tual execution, and to add some instructions which I am not prepared with. But to that purpose, that there be as much care as may be taken, not to give any occasion of war.

*Mr. Onslow.* Your vote already passed, to put a fleet forthwith to sea, answers all objections as to any delay in the business. I would have us careful, whatever our jealousies be, not to asperse our allies. I do not concur to speak so largely against the Dutch, who are at present in amity with us; though, perhaps, I am as jealous of them as any.

Those that offer you a Committee and the like, put you upon a delay.

I shall pursue what is offered. The great rocks are, 1. The fear of involving ourselves, in passing away of the militia; and 2. The danger of involving us in a war with our friends. I would reconcile these difficulties and dangers. I would have no vote to conclude your claim to the militia, nor one that has any inclination to foment a war, and so it was opened to you by the Secretary, to mediate peace, &c. I therefore move to pass a vote to this effect: that, *pro hac vice*, it be referred to his Highness, to put the former vote in speedy and effectual execution, and to send the fleet to sea; and that special care be taken to preserve a right understanding between foreign states, and to use all endeavours to mediate a peace between the princes.

*Mr. Chaloner.* If it be matter-of-fact that the worthy Serjeant has offered you, as that the Dutch have done you that mischief, I should be as much for a war as any man, but I doubt he is mistaken.

They have been your friends. Your men go under their flags and in their ships. They have not done you that harm. I would have the grounds of the war examined, before you send any fleet.

The Council of State durst not send an army to Scotland, till they had acquainted the Parliament with it. They provided all, and a declaration ready. The Parliament approved of the war and declaration.* I was one of the Council.†

* June 26, 1650. See *Parl. Hist.* (1763), xix. 276—283.

† "Mr. Thomas Chaloner" is the first of the five new members of the Council elected Feb. 13. 1649-50. *Ibid.* p. 251.

It is necessary you should be acquainted with the reason of this preparation. Make it your debate, whether for the interest of England and preservation of your trade in those parts, you should send a fleet into those seas.

If you merely assert the right of the militia, and then refer this matter back to the Protector, what account can you give* of it? I would not have any begin or hazard a war, without your privity.

*Mr. Swinfen.* Nought in your vote carries so far as the debate goes. Nothing is mentioned as to your advantage or disadvantage, to engage for or against any interest.

It is only generally agreed to send out a fleet for the ends that you do every year.

The Spaniard trades not. We can get nothing of him. The Dutch is in the bottom of all this business.

We cannot have our necessary commodities but over land to Lubeck, and there the Dane hath Glucstadt up the river; so we cannot pass without his leave.

Rather than to lose this, we ought to fight for it.

The nation will not have that weight and reputation with it, if the Protector send it, as if you send it, and own it, and countenance it; for they know abroad that the money is yours, and if you engage, you both will and can carry it on.

Suppose you should refer the execution of this vote to his Highness. This does not make a war, nor direct him one way or other. You need not determine touching the debate, of Dutch, or Danes, or Swede.

The militia comes not at all in dispute by this reference. This reference takes and keeps the militia in your hands. His Highness acquaints you, and rather gives you a possession. It implies that the militia is in you. His Highness would never have sent to you else. If he had sent to you, to put it into execution,† it had been that he had then taken the militia upon him.

You have, *nemine contradicente*, agreed to send a fleet, and

* Probably to their constituents, unless they were *nominees*.

† By merely voting a supply, is probably intended.

now, unless you send them out, it will do you no good. Such debate will retard your business; you lose both opportunity of honour and safety. The occasion requires speed.

Admit it should engage us in a war, you cannot come to a particular resolution but your enemies will know it beforehand. You must hear Dutch, Dane, and Swede, by their ambassadors; and who so proper as his Highness?

Refer it to his Highness, with due caution not to engage us in a war. I agree with Serjeant Maynard's motion.

*Mr. Lloyd.* This preparation amounts to no more than your ordinary preparation every year; but it is reported to you, that the Sound is in danger.

We must come out of the clouds and speak plain English. The bottom is the Dutch, but it is *res ipsa loquitur*. We feel the Dutch. The Spanish could not offend us at sea without the Dutch. They are worse than enemies, secret enemies.

If we were enemies, we could meet with his prizes, as well as he does with us. I vow I speak it tremblingly. If this opportunity be lost, I dread the consequence.

I hope you will send ambassadors to mediate a peace, but rather than lose your interest you will engage in a war. Let us speak plain, come out of the clouds, whether you will engage if there be occasion.

If the Dutch give us no provocation, we will not engage. Do but countenance and own it. It will go a great way abroad.

You need not involve your militia; make it with an *hac vice tantum*. You admit the executive power in his Highness; and this is no more than to give him the executive in this. Refer it to his Highness and the officers of the Admiralty and Navy. Let it be expressed, that you will send a fleet to the Sound. The Dutch have a long time declared their resolution. The more public, I think, the better, and more for your service.

*Sir Anthony Ashley Cooper.* If I thought to refer it to a Lord Protector and Council, were no more than a reference

to a Council of State, or a Committee of the House, I should not now trouble you, but there is more in this.

You might very well retain what you grant. And, on the other side, if there were no hazard of a war, nor engaging your militia,* it were not so much neither. But this implies a war: and doth it not signify that you will have no regard to treaties and amities, but merely to interest of state?

If you will begin a war, it must be upon clear grounds; the state of all things declared, the justness of the quarrel stated. The grounds† were manifestly held out to the Long Parliament. When Henry V.‡ engaged in the war with

* This term now comprehended the whole machinery of war, *le matériel*, whether human, brutal, or mechanical; and however engaged, in the sea or land service.

† Of war with the Dutch in 1652. See *supra*, p. 380, *note*; where, for August, read May. "The Parliament's manifesto," or declaration, and "the papers" in proof of the allegations, were "all translated into Latin, Dutch, and French," and "ordered, July 7, to be forthwith printed and published." *Parl. Hist.* (1763,) xx. 90.

‡ "Aug. 13, 1415," the King "set sail from Southampton, and landed the next day near Harfleur to invade France, and, by the *ratio ultima regum*, to assert his right to that kingdom." *Parl. Hist.* (1762,) ii. 148.

This war, according to *Rapin*, was highly popular, even "le désir universal de tout l'Angleterre;" and the unscrupulous ambition of the Prince was well prepared to indulge the savage and sanguinary propensities of an ignorant priest-ridden people.

"Henry V." says *Le Père d'Orleans*, "n'eut aucune tendresse de conscience sur l'usurpation des couronnes, et à en juger par ses actions, Cesar, tout payen qu'il estoit, n'eut jamais plus avant que luy cette maxime dans le cœur, qu'il n'est pas honteux d'estre injuste quand on l'est que pour regner." *Revolutions d'Angleterre*, (1693,) pp. 175, 176.

"Henry V.," says another foreigner, "was, in the eyes of an Englishman, greater than Alexander; in the eyes of a Frenchman, almost a Nero; in the eyes of a citizen of the world, an ambitious Prince, who suffered himself to be led into several barbarities; and a conqueror, most of whose successes were easy ones. He owed the conquest of France somewhat to his valour, a good deal to the weakness of Charles VI., to the rage of the Queen, the youth of the Dauphin, and the divisions of the ministers." See "A Short View of the History of England, translated from the French of the Abbé Raynal," (1757,) p. 131.

France, the grounds were first laid, then money and shipping prepared.*

"Croiroit-on bien," says *Henault*, referring to Rymer's *Fœdera*, "que ce même Henri V., le conquerant d'une grande partie de la France, étoit obligé, chaque année, de mettre en gage ses pierreries et sa couronne pour entrer en campagne?" *Histoire*, (1789,) i. 365.

* "The grounds" of this war, were pretended hereditary claims to the crown of France, and to the people, the *servile pecus*, as a necessary appendage, a sort of *heir-loom* to the monarchy; but the determination now to vindicate those claims by a hostile invasion, was the work of the ecclesiastics, who raised the cry which has been heard through four centuries down to our times, and now especially, from the almost *sinecure* Protestant prelacy of a neighbouring Catholic island, "The Church is in danger;" and they thus contrived to effect her deliverance.

In 1404, the Commons had declared "that there was no other way of supplying the necessities of the public, but by diminishing the excessive wealth of the clergy." In 1410, they prepared a Bill in the form of a Petition to Henry IV., which was attributed to Sir John Oldcastle, Lord Cobham. It purported, according to *Walsingham*, "that temporalities disordinately wasted by men of the Church, might well suffice to find the King with 15 Earls, at 3000 marks each, annually; 1500 Knights, at 100 marks and 4 plough-lands each; 6200 Esquires, at 40 marks and 2 plough-lands each; and 100 additional almshouses, for the relief of poor people, at 100 marks each. And, over and above all these, the King might put yearly into his own coffers 20,000*l.*

"The Commons affirmed in their Bill, that the temporalities then in the possession of spiritual men, amounted to 322,000 marks, yearly rent. They also alleged that, over and above the said sum, several houses of religion in England possessed as many temporalities as might suffice to find 15000 priests, every priest to be allowed for his stipend, seven marks a year." *Parl. Hist.* (1762,) ii. 114, 115. See "The Life of Archbishop Chichele," (1699,) pp. 44, 46.

"The King rejected the petition of the Commons, whether it were that he feared an eternal infamy would attend him if he should rob the Church, or because he thought that the promoters of this design were secret favourers of the doctrine of John Wickliffe." *Ibid*, pp. 46, 47.

"Si le Parlement qui avoit le premier proposé de diminuer les revenus du clergé," says *Rapin*, "avoit reçu le nom de *Parlement ignorant*, [see vol. i. p. 252, *note*,] on peut bien juger celui-ci ne fut pas plus favorablement traité. Le nom de Lollard et d'Hérétique ne lui fut pas épargné, et le clergé regarda cette proposition comme tendant à sapper la religion par ses fondemens. C'est ce qu'on tâcha d'insinuer au Roi,

This navy must either go to look on or engage, if to engage, it is a war, if to look on, it is dangerous rather than advisable. I never knew it successful.

avec toutes les exagerations que des gens intérressez sont capables de donner à un tel sujet. Il est difficile de juger si le Roi en etoit lui-même persuadé; mais, quoi qu'il en soit, il fit connoître qu'il ne prenoit pas moins à cœur les intérêts du Clergé, que le clergé même. Il repondoit avec aigreur aux Communes, qu'il ne pouvoit ni ne vouloit consentir à ce qu'elles demandoient, et leur défendit, très expressement, de se mêler d'avantage de ce qui regardoit l'Eglise." *Histoire*, (1724,) iii. 407, 408.

"From that time, during the reign of Henry IV., there was nothing attempted against the Church." The Commons, however, in 1414, "in a Parliament at Leicester, petitioned the new King that their demands against the clergy, which were represented four years ago, might be taken into consideration again. The Archbishop was extremely troubled at this." He consulted "the Bishops," by whom "it was determined that the clergy should offer the King a great sum of money, and excite him to make war with the French:" further, "the Archbishop was of opinion, that the only way to keep the young King from making any disturbances at home, was to show him an enemy abroad, as there is no other way to stop the fury of a torrent, but by dividing the water into several channels." *Life of Chichele*, pp. 47, 49, 50.

"This before-remembred Bill," says an ancient chronicler, "was much noted and feared emongst the religious sort, whom in effect it muche touched, insomuch that the fat Abbotes swet, the proud Priors frouned, the poore Friers cursed, the sely Nonnes wept, and al together were nothyng pleased, nor yet content.—Wherefore thei determined to cast all chaunces whiche mighte serve their purpose, and in especial to replenish the Kynge's brayne with some pleasante study that he should nether phantasy nor regard the serious petition of the importunate Commons."

The "pleasante study" which they determined to recommend was, the conquest of "the whole realme of Fraunce," Thus, "on a daie when the Kyng was present in the Parliament," this was enforced on his royal attention, in a long and learned speech by "Henry Chicheley, Archbishop of Canterbury, therto newly preferred, whiche before time, had been a monke of the Carthusians, a man which had professed wilfull povertie in religion, and yet commyng abrode muche desired honor, and a man muche regardyng Gode's law, but more lovyng his owne lucre." See "The Victorious Actes of Kyng Henry the Fifth," in Hall's *Union*, (1548,) *fol.* xxxvi.

*Grafton* adds, "that nothing could be eyther more or better spoken.

The Pope sent an army or navy once to the like purpose, when two fighting princes were determining their quarrel. He intended to look on in a war between Milan and the Florentine. But the fortune of that was, that he was made a prey to the conqueror,* and conquerors have always discouraged that looking on. You are in peace with Swede, and Dane, and Dutch. If at peace, what is the quarrel?

The justice of the quarrel must be considered. If we war with any, we must answer it as one honest man would do to another.

The Dane made first an invasion upon the Swede. The Swede's quarrel was just, I grant. He might safely keep what he gained.

The Dane kept the treaty punctually, which was made by our mediation. How then, can we assist the Swede, who is upon the score of breaking his treaty, and go against our confederate, the Dane, without ground; or stand by, and see him ruined.

The Dutch have the greatest interest, and they have a just

And when the Bishop had done, then the nobilitie in like manner sayd to and fro their mindes, so that nowe there was used none other talke in every manne's mouth in the Parliament House, but for the conqueryng of Fraunce, and the Bill against the clergie was lulled saleep, and nothing came thereof." *Chronicle*, (1569,) p. 445.

As Henry V. claimed the crown of France through a female line, to which claim the *Salique* law was opposed, the Archbishop urged as a powerful theological argument to recommend the "pleasante study," the genealogy of the Saviour, thus consecrating the proposed hostile expedition.

"We Christians do all acknowledge that Jesus Christ was the lawful heir of the Jewish kingdom. Now, they who deny a right of succession to be derived from the female sex, do not only oppose his title, but also deprive us of those exceeding great benefits which God hath promised to mankind through Christ. The French choose rather to destroy the veracity of the divine promises, than to submit to a foreign prince: and they that call themselves *most Christian*, do prefer a supposititious law of Pharamond, a heathen, before those sacred laws given by God." *Life of Chichele*, pp. 56, 57. Thus it was truly said (*supra* p. 414, *note*) that "the Bible has been made a great courtier."

* The Pope to whose intrigues and misadventures this speaker refers was, I apprehend, Clement VII.

interest already granted them by the Dane. If we invade that right of the Dutch, we begin the quarrel. So far for justice. Till the justice be decided, I shall never countenance the war.

If the Dane gain the Sound, it will be very dangerous; and will it not be more so, if the Swede get it, than if it comes into the hands of the Dane or Dutch? He hath almost all the Sound, and the territories and coast by land. He is master of the greatest shipping, and will command the Baltic Sea. He is a most potent prince, that hath at this time one of the best and ablest councils for war in Christendom. He understands the secret of trade. His business must be to make himself not only the greatest master at sea, but of trade also. He may overrun Spain, Denmark, Pomerania, Italy, and make himself master of this part of the world.

His predecessors overran the whole world with their bodies of men; but how much easier will it be for them to transport these great bodies of men, when they shall gain the great mastery at sea. Are not the Dutch and we in most danger to be the first fallen on? By reason of state, we or Holland must be his next prey.

Admit the worst. Suppose the Dutch have the Sound. But how will they keep it? You have the King of Sweden your friend; and the King of Denmark, he also is a sure friend, as necessity makes him to be so.

You have all the petty princes upon the Baltic coast, the Hans Towns, and free States and Cities. These will help you against Holland, whose interest it is to suppress them. But if the Swede obtain it, what friend have we, or friendship with any, that can serve us to get it out of the Swede's hands, if ever he get it wholly? I move that we may not engage.

Here is a preparation of a million, and our eyes are towards the Sound. But how stand our engagements. Are we engaged, or free to assist the Swede. If we be not engaged, that may alter the case, and we may debate it. But I would move, upon the whole matter, to have the power of war and peace in this House.

I would neither be engaged in a dangerous war, nor in what will cost a million of money. It is a dangerous precedent, which in former times would not be suffered. This precedent was not allowed in 1640. You will give away a great part of your militia. I move again, not to be surprised in anything; lest by quenching flames abroad, you kindle flames at home.* You have done enough in preparing what you have done.

In the meantime, whilst we debate, let the preparations go forward. I would have it referred to the Commissioners of the Navy and Admiralty.

*Major Beake.* I understand not what that gentleman would have referred to the Commissioners of the Navy and Admiralty. There is a necessity to do something with all speed. Self-preservation, in some cases, furnishes good grounds to justify the taking up arms: the argument against the design, is the difficulty of undertaking it by a war. I suppose the case may be a case of war. I cannot distinguish but that a war will ensue, in case the state of affairs require it, upon the place.

Here are two princes in dispute about their respective rights. As to the Swede, it is supposed the first war was

* This speaker, the *Achitophel* of Dryden, was not ill described as "for close designs and crooked counsels fit." He now would not "kindle flames at home." Yet he was "accused before the Parliament" during this year, 1659, and, as now appears, not unjustly, "for keeping intelligence with the king, and for having provided a force of men in Dorsetshire, to join with Sir George Booth." (See *supra*, p. 293 *note*.)

A panegyrical biographer, says of "our brave patriot," while describing "his unwearied endeavours to restore his most sacred Majesty," that "the constant correspondence he always kept up with the royal party, and that almost to the hazard of his life and family, are sufficient testimonies of his sincerity to his master's interest and service.

"His house was a sanctuary for distressed royalists, and his correspondence with the king's friends, (though closely managed, as the necessities of those times required) are not unknown to those that were the principal managers of his Majesty's affairs at that time." See "The Compleat Statesman demonstrated, in the Life, Actions, and Politicks of that great Minister of State, Anthony, Earl of Shaftsbury." (1683), pp. 24, 25. See, also, vol. i. p. 204, *ad fin.*, ii. 419.

upon just grounds: I will not dispute it. But a war unjust in its rise, may be just in the consequences of it; in something arising upon the result.

Suppose an innocent party assaulted, the party assaulted goes beyond the bounds, the just measure of defence or retaliation, and pursues his stroke to blood. In this case the party nocent may keep the sword in his hand, to defend himself against the innocent person, and a third party may step in to prevent him from doing injury. Let this case be applied.

Examine the interest engaged in this business. You will find the imperialists the highest and greatest. Take away the King of Sweden, and you make clear way for the imperialists.

As to the interest of trade, if the Sound come into the hands of the Dutch, they will draw the portcullis, and without that, we can neither defend ourselves nor employ ourselves. We are an island, and not capable to depend upon ourselves without trade with all parts.

Refer this to his Highness and council.

*Sir Henry Vane* and *Mr. Trevor* moved to adjourn for an hour, that we might all sit upon an equal account; and this debate was adjourned accordingly.

Resolved that the House be adjourned until half-an-hour past two o'clock.

*Afternoon at three. February* 24, 1658-9.

*Mr. Alderman Topham*, (a burgess for York.) Except the Sound be guarded, we shall not want only cordage, &c. but very bread. All commodities which come from Moscow, would be brought down to the ports of Poland. We want only a navy to secure our trade, and be a guard to the merchants and ships.

My motion is, that you would refer to his Highness the Lord Protector the care of guarding the seas, and that two members of the House be joined in a Committee to go along with the Admiral, to see that there be no rash engagement.

*Mr. Speaker* moved what Mr. Onslow had moved, as to the

*hac vice tantum*, that it be referred to his Highness forthwith to set forth a fleet, &c. This question was twice read.

*Mr. Scot.* You are asked to have it referred, *hac vice*. I except against the words. I dare not give away our right, no, not for a moment; especially yielding it to him who claims it *ex adverso*. Take possession of it first. *Nil dat, quod non habet*. I would have a previous vote, before you dispose, that the right of the militia is in this House; for all is yet here, until you give it out. You cannot dispatch this fleet under the word, Parliament. We must know first what is the Parliament; and if two Houses, which of the two Houses. The question is, whether you should refer it to the single person, or keep it here. There are two things, first, the execution. As to the preparations, what need you to say the Protector shall order the Commissioners of the Navy, when you yourselves may do it. Secondly, the dispositive and directive power. Is it all that you have to do, to say that you are so far masters of the militia as to dispose of it to others. You have said it is in you. You are the constitutors. It is yet in your power, and not suitable to your occasions, to stay settling the constitution. The fleet cannot stay so long. Take not less than the Petition and Advice gives you.

It is objected, that you are not a body fit to manage such an affair as this. But the time well was, when two kingdoms* were conquered, and the Dutch *tantum non*, by the counsels of a Parliament and some twenty of the Council. Then why that argument, that such bodies are not fit to manage such a business, because of required secrecy.

It is said, that when we made war against Scotland, we began first; that the war was carried on by the Long Parliament upon a presumption that they would do us wrong; and so it is applied to the Dutch being capable to do us harm. But it was not presumptions barely against Scotland: it was demonstrations. They made the war first. We had uncon-

* Scotland and Ireland.

trollable evidence and even assurance that they espoused the King of Scots' interest, his patrimonial interest here, and would restore the King to his hereditary dominions. Was not this ground enough?* Secondly, there was justice demanded. An army was raised and sent to the frontiers, and a declaration sent to them, that if they would secure us against these attempts, then we would desist.

Whether then, we should refer this matter to his Highness and the Council, or whether we should manage it here? I have told you already, that a Parliament and Council did manage the war with great success. The case is different now. *Eadem ratio, eadem lex. De operibus Dei non est judicandum ante quintum actum.*

I know no incommodiousness in it.

The former vote was, as Mr. Swinfen told you, a virgin vote, not big-bellied at all. You gave nought away. But do not you, in any vote, say you are not fit to manage that affair, or denounce a war; but you leave it to his Highness. Is it not ground enough for you lawfully to send a fleet of ships into the Baltic Sea, to guard your merchants and secure your trade there.

The last summer, Mr. Topham said,† the King of Sweden sent a dispatch, that if he might have ten or twenty ships, he would quit us of contribution. He further said, that you might have had Cronenburgh Castle. If the Council would not accept such an advantage, you should not think it fit to trust them with the management of it now.

Are not the Council you would refer it to, his Highness's Council? I look upon his father as of much more experience and counsel than himself; yet he was never so successful as when he was a servant to the Commonwealth. What a dishonourable peace he made, and what an unprofitable and dangerous war. Was not the effect of the peace with Holland, and the war with Spain, the most disadvantageous and deplorable that ever were? Therefore, if he that was a man of war and of counsel, miscarried, why should I trust a single

* See *supra*, p. 372, 396, *notes*.

† *Supra*, p. 438.

person, the most unfit to refer it to. Yet you do implicitly commit the whole charge upon his Highness.

We are not engaged against the Dane, Swede, or Dutch. What then should our fleet do there? Provoke five or six princes, engage voluntarily, not only against Holland, but against the Dane, Brandenburgh, Emperor, and all that party. If the Dane gain it, never expect any kindness from thence. If the Swede be conqueror, you are at his discretion; you have no footing.

Sir, let the business be what it will be; whatever you do, let it be by your counsels. Transmit it not, it is your doing and counselling, and countenancing, that will give credit and reputation to the action.

It is known abroad, the Dutch know, that a Parliament of England can fight and conquer too; but they do not know so much of any body else.

When should the fleet go? What if, when your fleet go forth, the Dutch should pour out their fleet and strength in Charles Stuart's behalf, upon you at home.

Here is a rubber playing in Christendom. Can you, by law or conscience, undertake to assist either party. Is there any of them you can in justice attack. What title can you have? If the war be not just, it will ruin you. It was told you well, there is no just ground. It is objected that you are in danger, therefore you must prevent it. Indeed, by the judaical law, if I were hungry, I may take an apple hanging over my head, or in a hedge, or, being in want, kill a sheep and take the shoulder, and leave the rest: it shall not be felony. But I cannot take away the land, nor the tree that bore the fruit. I dare not say it is *mare liberum*, lest I conclude your narrow sea. But if we cannot do well without Cronenburgh and Elsinore, what! must we have and take then by justice and injustice, by hook and by crook. God can send supplies a better way, and by better means. I move,

1. To declare the right of the militia, sitting the Parliament, to be in yourselves.

2. That you will dispose of this expedition, yourselves, to be in such hands as you think fit.

3. That you will examine the grounds of the war; and be shown how you may make a lawful war, or upon what terms we ought to undertake it.

*Mr. Topham.* A word of vindication. I never said that I knew ought of dispatches between the King of Sweden and his Highness; it was only what I heard a merchant say.

*Mr. Scot* said he understood him otherwise.

*Captain Hatsell.* I desire not to reflect upon what was done by his Highness, or the Long Parliament. It is objected that this may occasion a war. I hope not; but if for not doing this you become a prey, that is considerable too. I shall speak to your question.

The Hollander is undoubtedly endeavouring to become master of the Sound, the door of the Baltic Sea.

We find the King of Sweden deeply engaged against the Dane, Pole, Emperor, and Brandenburgh. If these complicated interests prevail, you are utterly shut out. The Dutch contribute their assistance to the King of Denmark. If the Dutch go forth with their fleet, and supply the Dane, and the Swede be driven out, and the Dane become master of it, what is our interest then in those parts? If the confederate forces drive out the Swede, what will your commerce there signify? The Swede never did you an injury. You need not suspect him. The Dutch have done you injuries, and that very lately.

If the Swedes should succeed, the Dutch would, with their fleet and 4000 men, make peace with them.

You can neither preserve your trade nor your own safety, without putting out the fleet presently. The time of year is for hemp and flax coming from those seas. I would have you refer it to his Highness and the Council.

*Mr. Neville.* I know not what your question is, nor to whom you are referring it. I know not that the Council are made, or approved by you. I know not that there is a Council in being; you give the power of peace and war by this vote, to his Highness.

I understand by that gentleman's motion, that the Dutch are already your enemies. He says they carry 4000 men that

are your enemies. I would have you refer it to the Commissioners of the Admiralty and Navy; but I am against referring it to any Committee. I shall desire to be heard to the merit, before I part with so great a right as this in one question.

*Mr. Lechmere.* In your vote you had this business in your eye, touching the Baltic Sea; you have resolved to go forth with a very considerable navy.

It was moved that you cannot, in justice and right to the people, transfer it. I think you will not equip a navy, or appoint officers without advising your single person. I would not have us do that yet. This is to limit him with a witness. You did so in the beginning of the Long Parliament, limit the King, but that was only in case of his refusal. His Highness does not refuse to join in any thing that you advise him to. Let your vote be thus: That it be referred to his Highness to put in speedy and effectual execution this vote, and to dispose and employ the same, according to such advice as from time to time he shall receive from the Parliament.*

By the Petition and Advice, which I take to be a law, it is directed that, sitting the Parliament, the militia shall be disposed by Advice of Parliament. The case is not as in 42, in case of his Majesty's not concurrence,† for you may have what consent and concurrence you please from his Highness.

He repeated the question again, as he had said before.

*Mr. Godfrey.* I second that motion, as clearly concurring with my sense.

There is no necessity at present to enter upon debate of the militia. The asserting of it in your declaration was only in case of the King's refusal. Blessed be God, there is not that occasion now.

You ought indeed to be very tender how you engage against your allies. Leaving the putting the execution to his Highness will answer that.

*Mr. Trevor.* I desire to know what is meant by advice of

* "This motion was not expected from him." *Goddard MS.*, p. 240.

† See vol. ii. p. 435, *note* *.

Parliament; whether it is intended that all instructions that shall go along with this expedition must be first allowed and confirmed here. Then the consequence is obvious. If you mean the advice shall signify nought, then otherwise.

It is objected, that this war is not just nor lawful. It may be replied, that we send our fleet and forces thither, not designedly to pick a quarrel, or to make a war. It is true, the consequence may be a war, so may our sitting still be a war. If the Dutch get the possession of all, we are not then further off from war than now. We must either have a war, or a peace as bad as a war; to have trade at their discretion. No man that has a concern in the interest of this nation can refuse this.

Instead of denying your power in the militia, it asserts it.

We must be ready to serve occasions, not to pick occasions. The business of war or peace must be trusted to the persons upon the place; you must give them general instructions.

If I knew any other way, I should advise. It would make us laughing-stocks, to declare beforehand what we will do. The Long Parliament never did it, but left it to the Council.

Refer it to his Highness to put this vote in execution, and if you please to add such prudent instructions as to be careful of making unnecessary war, &c.

*Serjeant Maynard.* I am against putting the word "advice," or to put whether these words shall be added; not that I am against advice, but that I would not have it so as that they cannot proceed but by your advice.

*Mr. Bulkeley.* Add "not to engage upon unnecessary terms."

*Colonel Morley.* My heart has bled for the blood already spilt, seeing how we were mistaken in what we fought for. I am against a war, unless upon clear grounds. I would have the leagues before us. All transactions should be before a Committee. Those being drawn up, communicate them to his Highness and then go out.

I like well that you leave out the Council. I had rather refer it to his Highness; for the Council has made a dishonourable peace and a worse war.

*Mr. Noell.* Your case is, whether you will now go out to defend your being, or for ever destroy it. You cannot retrieve it, if once past.

I understand not that you are going to quarrel, either with Dutch or Dane. His late Highness sent to mediate a peace between those two princes. He did it with a great deal of prudence and wisdom. This could take no effect; they gave good words. The Dutch did yet send forces to assist the Danes. If we will be blind, we may. They went with a military power.

We that are merchants do see, and can see this business, that he intends to bring us under subjection. Where they have power, they are the unpitifullest people in the world. We know it, that feel it.

You go with a mediatory design, like Christians. It is not your design to take away the Sound from Denmark. You go not with any design of ruining any prince.

The business is not to help one or another, or to fight the Dutch; but with a force to mediate. If God bless the mediation, well. But suppose the worst, that the Dutch will set up the King of Denmark against the Swede, let us then share with the Dutch.

Without this, we cannot go out to sea; but sneakingly. Is it not for your honour. Your merchants cannot go with reputation unless they can say "Our prince can protect us." What makes the Jews so despicable, and made to wear yellow caps and red caps, but because they want a prince to protect them.*

* See vol. i. p. 309, *note.* "In the 18th of Edward I. (1290,) all the Jews were banished out of London and England, there being at that time about 15000 in the kingdom, who had all their goods seized and confiscated to the King's use, and only so much money left them as would bear their charges out of the kingdom. But before this, he ordained that the Jews should wear a mark or cognizance upon their upper garments, whereby to be known, and restrained their excessive taking of usury." See "The Proceedings, 1655," annexed to *Two Journeys,* (1730,) pp. 173, 174.

During those *Proceedings,* "the Judges Glynn and Steel said, there

If you miss this opportunity, I shall repent that ever I was born in this generation. It will be too late to-morrow. This action requires privacy. I understand not how you can manage.

I have nought but what I have scattered all the world over. I shall suffer as much by a Dutch war as any man; but I care not for my all, so posterity be cared for.

It must be carried on with counsels not fit to be known here. I hope you will not rise till you rejoice the hearts of all merchants in England; and all good people and generations to come will bless you for it.

*Mr. Reynolds.* If the Council go upon a principle that it is not fit for you to know, it is then fit indeed, to refer it to them. I have heard all this debate, and I profess I apprehend not what is at the bottom of it; nor am I convinced of the necessity so strongly pressed to hasten out this fleet.

If there be any engagement between us and the Swede, let us know it, and what it is. Who can blame the Dutch in what they do. If there be any design to make the King of Sweden master of the Sound, I pray we may know the bottom of it. The Swedish agent, I have heard, solicits for twenty frigates.

It is the interest of the mortgager as well as mortgagee to preserve the pledge; it is wisdom in the Dutch to do so. I understand not this to be the interest of England, else I am not an Englishman.

Without all doubt there is some latent reason, and engagement to the Swede, that we do not know of; else so many worthy persons would not press it so earnestly. If we must be involved in a war, contrary to our reason, it is strange.

It is said he trembles if we go not. I tremble if we go,

was no law which forbid the Jews' return into England; and it was therefore insisted on, that they might come upon terms and agreements, and might at first be only permitted and connived at, which might be restrained if any inconvenience happened, and that all due care might be taken to prevent their blaspheming the Lord Jesus Christ, adoring the law, and seducing others." *Ibid*, p. 174. See also *Parl. Hist.* (1762,) i. 95, 96.

and I doubt we shall deserve to wear caps and coats, as the Jews do,* if we go on with this business upon no better considerations. I would have some members appointed to advise about it. It may be carried on with secrecy enough.

I say it again, I am confident there is some engagement underhand, to carry on the Swedes' interest contrary to ours, or I know not what, *per fas aut nefas.*

The Dutch dare not take the Sound, lest they bring all Europe about their ears.

I move to consider what engagement there is between us and Sweden.

*Mr. Secretary.* This question has spent you much time. I shall not spend much more. It is not fit for me to advise you. I presume not to give you any counsel in this business, but only to clear matter-of-fact. That worthy gentleman said he was very confident that there was some engagement underhand, to carry on the Swedish business. It doth not belong to charity to say or think so. You had a very honest, just, and true account of that affair, which was neither more nor less than what was then told you, with all ingenuity, and left to your wisdoms to take what counsels you think fit in that business. I told you there was no engagement at all. I was in hope that gentleman would give as much credit to my report, as not to have disbelieved it, unless he had known something of certainty against it. I know not what the Dutch think, but I do not believe they are such fearful men as we think they are; that they are afraid of bringing Europe about their ears. I never heard that anybody made a doubt in Holland, whether they should prepare their fleet upon this expedition or not.† Really here is no question about any war; nor, if you

* See *supra*, p. 479. *ad fin.*

† "The last from the Hague, Feb. 28, S. N. There are two new frigates building at Rotterdam, and more in several other places, and they are eagerly hearkening after what you do in England.

"This State hath appointed an Envoy Extraordinary to go to Thoren, to assist in that treaty betwixt the Swede and the Pole; and two persons to go in the same quality to the King of Denmark. In a word, they are resolved here, rather to fare hard at home, than to starve, or

refer it to any, will they engage in any war but to defend themselves in case of being first assaulted.

If the Dutch should affront you and assault you, and your interest be attempted upon, I think you would give way to fight; and this is all that I know, that is in question.

It is neither for one end nor another, but only to secure the interest of England. The things are very obvious. I had as lieve it should be referred to other hands, but not for those reasons.

Great objection has been made to the management of the peace for ending the Dutch war. I wonder these gentlemen are so much now against the beginning of it again. I wish, with all my heart, the war had been prosecuted by the Long Parliament, to the utmost success, instead of their being *tantum non* conquered;* that they must either have come to a coalition with you, to be one people, or have been brought to your feet. What progress was made in this, I know not; but I am sure of this, that the first offer of peace came from them.

That war had cost you near two millions of money. That was going to be done to manage that war, which would not have pleased the nation; the selling of tithes.† The pro-

be wanting to their interest abroad." *Mercurius Politicus*, No. 556, p. 271.

"From the Hague, Feb. 28. The States resolved, that the one-hundredth part of men's estate should be paid by way of assessment, which the people is willing to pay, because it tends to preserve their trading. A considerable navy is to go very speedily to help the King of Denmark." *Public Intelligencer*, No. 166, p. 267.

* See *supra*, p. 473, *ad fin.*

† I have not found any record of this parliamentary project. A proposal for removing "the burden of tithes" was made in 1648, (see vol. ii. p. 386,) and again, "Feb. 26, 1648-9," when, according to *Whitlock*, "John Lilburn delivered a paper to the House, with many hands to it, in the name of 'Addresses to the Supreme Authority of England.'" Among the proposed reforms, was the following paragraph:—

"That tythes be quite taken away; the Excise, Customs, and Merchants Companies; that there be no imprisonment of disabled men for debts; and a course to force all that are able, to pay their debts, and not to shelter themselves in prison." *Memorials*, (1732,) p. 384. See vol. i. p. 5, *note*.

posals of peace came from them. One of the two provinces did write a letter, indeed, bewailing the sad effects and condition of the war. Thereupon, this State did write a letter back to heal the breach.

The peace savours more of a conquest than a peace. If that treaty be looked into, they took part with you against Charles Stuart.* They departed from many things they

Dr. Bates says of these petitioners, "complura justa reique publicæ proficua futura, convitiis, haudquaquam tamen falsis, interspersa proponunt." *Elenchus* (1676,) p. 139. (They proposed many things, just and conducive to the public service, interspersed with censures not ill-merited.) The same author ascribes to some officers under Fairfax another proposal, "ut abolitis, aut alio conversis decimis, certiora stipendia sacrorum ministris erogentur." *Ibid.* (that tithes being abolished, or otherwise applied, the ministers of religion might receive more certain stipends.)

These compulsive *stipendia* were as tenaciously claimed by the Presbyterian, as by the Episcopalian clergy. They soon, however, became disapproved, not only by the Quakers, but also by the increasing community of Independents, as a *judaical* support of "an hireling ministry," ill-calculated, by rendering "the wages" more certain than "the work performed," to secure a succession of diligent and exemplary Christian teachers.

Petitions for and against the abolition of tithes were presented to the Short Parliament in 1653, though, so far as appears, without producing any farther consideration of the subject Tithes are still enforced by law; too often checking the improvement of agriculture, or harassing the agriculturist, if not detracting from the character and influence of an endowed clergy, amenable for misconduct to ecclesiastical superiors, but entirely irresponsible to the people; over whom they are appointed, except in some rare instances, without even the semblance of a popular choice.

* This, without naming Charles Stuart, was sufficiently implied in several clauses of the treaty, (See *supra*, p. 391, *note*) especially in the following provisions of the 9th and 10th Articles:—

"Neither of the said Republics, or the people thereof, shall receive either the persons or goods of such as are already declared, or may hereafter be declared, the enemy or enemies, rebel or rebels, fugitive or fugitives of either republic." Upon notice that such enemy is "residing, lurking, or seeking shelter," a mandate shall be issued, and "if he does not depart within a fortnight, he shall be punished with death, and the loss of goods and chattels." See "A Collection of Treaties," (1732,) iii. 69, 70.

had demanded at the beginning of the war. I have heard very wise men say, that they think themselves so hard put

This Treaty was soon followed by "A Secret Article, or Declaration of the States of Holland and West Friezeland, done at the Hague, May 4, 1654."

It recites "the great apprehension of his Highness, that whenever the highest office in these States should happen to be conferred upon the Princes of Orange, or their successors or descendants of the House of Stuart, great misunderstandings and jealousies might on several accounts naturally arise between the two nations."

Then the States, "particularly to content and satisfy his aforesaid Serene Highness, to the utmost of their power—do declare themselves by those presents, that they think proper never to elect any Prince of Orange, or any of their issue, for their Statholder or Admiral of their provinces; neither will they consent to his being elected so much as Captain-general of the Militia of these countries. To all which they oblige themselves in the most solemn manner." *Ibid.* pp. 87, 88. See *supra*, pp. 176, 259. *notes*.

In 1660, the Dutch hastened to make their peace with the royal exile, whose "residing, lurking, or seeking shelter" in their territories they had thus forbidden, in 1654, on pain of death.

"The king had not been many days in Breda," says Lord Clarendon, "before the States General sent deputies of their own body, to congratulate his majesty's arrival in their dominions, and to acknowledge the great honour he had vouchsafed to do them. The magistrates of the town took all imaginable care to express their devotion to the King. So that no man would have imagined by the treatment he now received, that he had been so lately forbid to come into that place." *History*, (1712,) iii. 766, 767.

"The first that made court to the King," says *Coke*, "were the Dutch when he was at Breda, to enter into a league with them." They "caressed him with a most rich and splendid gilded yacht, to prepare him for a treaty, after his accession to his crowns." *Detection*, (1697,) p. 426.

"King Charles," says Bishop Burnet, "when he was seeking for colours for the war with the Dutch, in 1672, urged it for one, that they suffered some of his rebels to live in their provinces. Borel, then their ambassador, answered, 'that it was a maxim of long standing among them, not to enquire upon what account strangers came to live in their country, but to receive them all, unless they had been concerned in conspiracies against the persons of princes.' The King told him, upon that, how they had used both himself and his brother. Borel, in great simplicity, answered, *Ha! Sire, c'estoit une autre chose. Cromwell estoit un grand homme, et il se faisoit craindre et par terre et par mer.* This was very

upon by that peace, that they will never be quiet until they have extricated themselves out of it.

They were then able to put forth one hundred sail. Let not him that puts on his armour, boast himself as he that puts it off. Then, as to the war with Spain: the Spanish interest was never before cried up in Parliament as so considerable to this State. Queen Elizabeth would never be persuaded to make peace. She always vexed them in their Indias, though she had great affection to Philip II.* King

rough. The King's answer was, *Je me feray craindre aussy, à mon tour:* But he was scarce as good as his word." *Own Times*, (1724,) i. 81.

* To him Elizabeth probably owed her preservation, "on the breaking out of Wiat's conspiracy," in 1554. "The Bishops were offering cruel counsels against her. But King Philip so far mollified the Queen towards her, that he prevailed with her to bring her to Court, and to admit her to her presence," having "conveyed himself secretly into a corner of the room, that he might prevent a farther breach, in case the Queen should fall into heats with her." See Bishop Burnet's *Reformation*, (1728,) ii. 302, 303.

Yet the martyr's crown, so profusely bestowed in the reign of Mary, was not the diadem to which Elizabeth aspired. *Camden* thus describes her accommodating policy, at this critical period:—

"Quum tamen illa, ut navigium, ingruente tempestate, sese moderans, ad Romanæ religionis normam sacra audiret, et sæpius confiteretur. Imo Cardinale Polo asperius interpellante, se Romano-Catholicam, præ terrore mortis, profiteretur." *Historia*, i. 21.

"The Lady Elizabeth, now governing herself as it were a ship in stormy weather, both heard divine service after the Romish manner, and was often confessed. Yea, at the rigorous instances and menaces of Cardinal Pole, professed herself, for fear of death, a Romish Catholic." *History*, (1675,) p. 9. See *supra*, p. 412, *note*.

On the accession of Elizabeth, in 1558, "Philip proposed marriage to the Queen. Yet, though she firmly resolved not to marry King Philip, she thought that, during the treaty at Cambray, it was not fit to put him quite out of hopes. So he sent to Rome for a dispensation." *Burnet*, ii. 313.

"Queen Elizabeth became," says *Osborn*, "the severest scourge to Spain that it ever had, since emancipated from the Moors. The occasion of which some lay at the haughty and proud gate of the Spaniard, who grew implacable after he found he was deluded of his hope to marry her; others, to a nature residing in all princes, not to acknowledge any

James, indeed, courted the peace with Spain, pleasing himself with the title of *Rex Pacificus*,* whilst he forgot to be *Defensor fidei*.† But, in the 18th of that King, he was advised

friends or kindred, but what are allied to a capacity of doing them some future good.

"Yet this is manifest in the histories on both sides, that the Queen did, by way of mediation, long endeavour for a milder governing of his Dutch subjects, (of whose oppression both heaven and earth are witnesses,) before a sword was drawn in their defence." *Works of Osborn*, (1673,) p. 416.

* See "Mr. Lloyd," *supra*, p. 393. "The King of England," says *Rushworth*, "will not take the alarm (1619), abhorring war in general, and distasting the Palsgrave's cause, as an ill precedent against monarchy." *Hist. Coll.* (1703,) i. 11.

† This title was bestowed on Henry VIII. in 1521, by Leo X. as a reward for the King's defence of the Holy See. The book was first presented to the Pope in a fair MS. (as appears by Bishop Burnet's *Records*,) and soon after printed. It was entitled: "Assertio Septem Sacramentorum adversus Martyn Luther; edita ab invictissimo Angliæ et Franciæ Rege et de Hybernia, ejus nominis Octavo."

The Reformer "not only treated this piece of royal theology in a very cavalier manner, but, which seems to have given the most offence, ascribed it to others. The King, in 1525, replied in a second piece, intituled, 'Litterarum quibus invictissimus Princeps Henry VIII. &c. respondit ad quandam epistolam Martini Lutheri ad se missam, et ipsius Lutheranæ quoque Epistolæ exemplum.'

"As all the successors of this Prince," says Lord Orford, "owe their unchangeable title of Defender of the Faith to his piety and learning, we do not presume to question his pretensions. Otherwise, a little scepticism on his Majesty's talents for such a performance, mean as it is, might make us question whether he did not write the defence of the Sacraments against Luther, as one of his successors is supposed to have written the Εικων Βασιλικη; that is, with the pen of some court-prelate.

"It happened, unfortunately, that the champion of the Church neither convinced his antagonist nor himself. Luther died a heretic. His Majesty would have been one, if he had not erected himself into the Head of that very Church which he had received so glorious a compliment for opposing. But by a singular felicity in the wording of the title, it suited Henry equally well, when he burned Papists or Protestants; it suited each of his daughters, Mary and Elizabeth; it fitted the martyr Charles, and the profligate Charles; the Romish James and the Calvinist William; and, at last, seemed peculiarly adapted to the weak head of high-church Anne." See "Royal and Noble Authors," (1759,) i. 9—11.

by Parliament against it, and they then espoused the war.*

A Declaration or Remonstrance in the beginning of the Long Parliament, who were a wise Parliament, complains greatly against the peace with Spain.

It states that the King was managed by the Jesuits, having been damped before by the breaking with Spain, in the last year of King James. The interest of France was not, as they affirmed, so contrary to religion as that of Spain; and the peace made with Spain was without consent in Parliament.† Those things have weight with me.

Ofttimes peace with Spain has been complained of in Parliament, but this is the first time that war with Spain was complained of. You export as much commodity, and import as much from Spain, as ever you did. You will find the decay of trade, if you examine it, to proceed from another cause. Our trade is lost by occasion of the Dutch.

We had ill success in the beginning, in the West Indies;‡ but we must not judge by events. Never were things done

* In 1621. "The Commons," says *Rushworth*, "before their recess, drew up a Declaration to this effect; that if his Majesty cannot by treaty procure the peace and safety of his children abroad, and of the true professors in foreign parts, of the same religion professed by the Church of England, they would, to their utmost power, with their lives and fortunes assist him; so as that he may be able to do that with his sword, which, by a peaceable course, shall not be effected." *Hist. Coll.* (1703,) i. 27, 28. See *Parl. Hist.* (1763,) v. 472, 473.

† On this "Remonstrance of the State of the Kingdom," which was "presented to his Majesty at Hampton-court," Dec. 15, 1641, see vol. ii. p. 325, *ad fin.*; Lord Clarendon's *History*, (1712,) i. 311, 312.

The Commons describe "the Jesuited counsels," as "being most active and prevailing;" and "the interests and counsels of France," as "being not so contrary to the good of religion, and the prosperity of this kingdome, as those of Spain; and the papists of England having been ever more addicted to Spain than France." They then denounce "the precipitate breach with France," and "the peace with Spain, without consent of Parliament, contrary to the promise of King James to both Houses." See Husband's *Collection*, (1643,) pp. 3—5; *Rushworth*, iv. 204, 205; *Parl. Hist.* (1762,) x. 62, 63.

‡ See *supra*, pp. 102, 103, *note*.

more to the interest of the English nation than of late; or greater honour attained than from that war. Dunkirk* is more considerable than men are aware of.

* *Whitelock* records, "June 21, 1658, intelligence of the surrender of Dunkirk, and that the King of France, the Cardinal, and General Lockhart, entered the town with their forces; and Lockhart was put into the possession and command of it. Sept. 10. Letters of the proclaiming of Richard Lord Protector, at Dunkirk." *Memorials*, (1732,) pp. 674—5. See English Forces in France, vol. ii. p. 115, *note*.

In 1662, Charles II. sold Dunkirk to the French for 500,000*l.*, which, according to Bishop Burnet, "was all immediately squandered away among the mistress's creatures." This was "Mistress Palmer," whom the King "advanced to be Duchess of Cleveland," and whose husband was content to derive from such a "fountain of honour" as the royal adulterer, his titular dignity of "Earl of Castlemaine."

It was "at Mistress Palmer's lodgings" that "the cabal met," in 1661, by whom "the King was determined in the disposal of offices, with little regard to men's merits or services. And though the Earl of Clarendon did often prevail with the King to alter the resolutions taken there, yet he was forced to let a great deal go that he did not like."

This peeress, "one of the race of the Villiers, was a woman of great beauty, but most enormously vitious and ravenous; foolish, but imperious; very uneasy to the king, and always carrying on intrigues with other men; while yet she pretended she was jealous of him. His passion for her," adds Bishop Burnet, "and her strange behaviour towards him, did so disorder him, that often he was not master of himself, nor capable of minding business, which in so critical a time required great application." *Own Time*, (1724,) i. 94, 164, 165, 173.

Andrew Marvel, (*Works*, ii. 75.) as quoted by Dr. Harris, thus writes: "They have signed and sealed 10,000*l.* a-year more to the Duchess of Cleveland; who has likewise near 10,000*l.* a-year out of the new farm of the county excise of beer and ale; and 5000*l.* a-year out of the Post Office. All promotions, spiritual and temporal, pass under her cognizance." *Lives*, (1814,) v. 48. Well might the candidates for preferment in Church and State disguise or flatter the vices of their "Supreme Head," and even teach "the right divine of kings to govern wrong," while royal favour was awarded under such a discretion. The betrayed and infatuated people, who had invited Charles Stuart to return, were thus "taxed to dower a titled concubine." See *supra*, p. 274.

"It is credibly reported," says *Oldmixon*, (on Charles's Restoration,) that "he took Barbara Villiers from her husband that very night." *House of Stuart*, (1730,) p. 471. Sir Philip Warwick says: "because his chapel was out of order, he made his presence-chamber his oratory,

You may make as advantageous a peace as you please with them, if you spoil it not by your discourse here. You may, I believe, have your own terms. I shall pray you to make no delay of it, for I believe the necessity of your affairs requires it.

*Sir Henry Vane.* We are not yet at the bottom. Many considerable things have been offered in the last matter-of-fact, by Mr. Secretary.

What is declared, is to me very satisfactory. He assures us there is no engagement, nothing of any private treaty, between us and the Swede, that he knows of. But may there not be an underhand, secret treaty, that he knows not of. I have heard something to that purpose, and upon very good intelligence, that there is an engagement.

If the good Providence of God had not interrupted it, I believe the question had not now been to have been decided by you. The fleet should have gone long since, but it was prevented; and if it had gone, this debate had been determined before this time. But I shall not go upon that ground, but only upon the grounds that are offered, and suit my discourse to that.

The coalition with that State, the Dutch,* if it had been

wherein to pay his devotions that night to God." *Memoires*, (1813,) p. 473.

The reader may accept which of these anecdotes he pleases; or, perhaps, may credit both, with all their apparent incongruity, if he recollect the "lodgings" described by Bishop Burnet, whence "our most religious king" usually proceeded to "prayers and sacrament." See *supra*, p. 273, *ad fin.*

* This Speaker was well acquainted with the designs of the Council of State, acting for the Parliament after the king's execution. Dr. Dorislaus, who was assassinated at the Hague, in May 1649, according to *Whitlock* by "twelve English Cavaliers in disguise," had been sent as a "public minister there for the Parliament." Dr. Bates says that he had been instructed, "de *Coalitione*, si opportunum viderit, injicere mentionem, offerre, et illam hortari." *Elenchus*, (1676,) p. 138. (If opportunity offered, to introduce the subject of a coalition, and to recommend it to their acceptance.) So early had the Parliament entertained this project.

well pursued, you had shut out all correspondency with the Spanish interest.

I am not able to see through it, nor to understand how the whole state of managing the peace with Holland, and war with Spain, hath been agreeable at all to the interest of the State, but rather, very much to the interest of a single person.

The interest then used, and the endeavouring to bring the two nations to a coalition, which had made a great progress, would have drawn off the States wholly from the Spanish interest, which now mingles much in their counsels; and if that had been then followed home, it would have made that State at that time, wholly yours.

If, when you sent ten thousand men to Jamaica, where you have left your dead men to your reproach,* you had sent the same fleet to the Sound, and fallen upon the Dutch, that would have done your business. You might have been a great way in Germany, and have made an emperor there yourself.

That which increases my jealousy is, that I see this affair all along managed but to support the interest of a single person, and not for the public good, the people's interest.

Our counsels have been mingled with France, and taken from the Cardinal, who goeth upon the most tyrannical principles of government in the world. The French put us upon this remote design; and out of that bow, I doubt, comes this shaft, to be sent into the Sound. Whether this looks not like a principle, of Cardinal Mazarine, for your single person to get a fleet into his hands?

I know no reason you have to send a fleet indefinitely, implicitly upon this design. The Swede is absolute possessor of both sides of the Sound, and he will make sure of the passage too, if you do but assist him; and when he hath it, he must either give it you by new treaty, or you must take it out of his hands by force.

When one half was in the Dane's hands, and the other in

* See "Dr. Bates," *supra*, pp. 102, 103, *note*.

the Swede's, it was then best for us, for we might be as necessary to the Dane as any other.

France, when they see an opportunity, can easily resent former injuries. This business is not fit to be so openly debated. It requires more secrecy.

A two-fold necessity has been thought of, and is put upon you.

1. It is not to be delayed till to-morrow. That will be too late. This is the very nick of time, and they put it upon you with so great necessity, that all other arguments must receive no favour.

2. You must transmit wholly to the disposal of your single person, to do what he pleases. There is nothing lost in the preparations of the fleet. Your officers, I believe, are all commissionated upon that presumption, that the militia is already in him. Nought will satisfy, unless the militia be granted in the single person within twenty-four hours.

In answer to the objection.

1. The vote will not seclude us, unless the disposal be in the single person, and by that you give away implicitly the power of the militia, before you have asserted your own right, or taken it upon yourselves. Oh! but would you make the single person no other than a Committee-man!

Yet, though loth to own it, lest you come to a Commonwealth again, so dangerous, not so much as advice will be admitted.

2. And as you do not assert your right in the militia, so you do not assert your interest, or take that part of it that belongs to you in the very business before you. You must have the persons names brought in to you to be approved.

It is told you, you are not able here to make peace or war. Neither you nor your Council can manage peace and war. Your Commander-in-Chief must do it. I hope you will express your interest as well as a declaration. Assert the practice as well as the right of the militia. Be assured of the faithfulness to the Commonwealth, first, of those persons that you send. I hope you will have an able commander, and one that hath given good testimony of his good affection towards you.

3. You must at one day give up all the interest in the militia, upon the necessity that is urged upon you; the necessity that it must be done in this manner, and no other way.

1. Assert your militia to be in you.

2. Refer it to your Commissioners, to see that no delay be in it.

3. Have your officers before you, and approve of them.

4. Appoint a Committee of your own, to advise about disposing of this to the most public advantage.

*Mr. Solicitor-general.* I am no great statesman, and shall only look upon your affairs as they are at this time. It is a great question how your vote shall be put in execution. Is it not our interest to go into the Sound as the Dutch do, and for the same reason? We may go there without breach with them, as well as they without breach with us, to secure that place where our interest lies. To what end did his Highness acquaint you, unless he desired your advice, and acknowledged your interest. When you desire it, do you give it up from you.

If you vote all this power in you, it is not to exclude all other; for then we are as perfect a Commonwealth as ever we were.

This is plainly to shake off a single person and another House. Before 48, it was never challenged to be in this House. In the Parliament it was, and in the single person.

Your fleet will never go out, if it stay till all these questions be determined.

Notwithstanding the Secretary's explanation, that he knew nought of any private engagement to the Swede, Sir Henry Vane had affirmed that he was confident there was an engagement that he knew not of, and that he had heard so.

*Mr. Bulkeley* pressed that he might explain where he heard it, and of whom. If it was any of the council that engaged, they were not fit counsellors.

He was very hot in it, for which Sir Henry Vane afterwards reprehended him, and said, he could remember it, when he saw his turn.

*Mr. Turner* seconded Mr. Bulkeley.

*Sir Arthur Haslerigge* took it off. It was not pressed.

The question being put for candles,

The House was divided. The *Yeas* went forth.

*Yeas* 177. Mr. Gerrard and Mr. Raleigh, Tellers.

*Noes* 119. Sir Arthur Haslerigge and Mr. Scot, Tellers.

After a long debate, till almost eleven, the question was put if the question be now put.

*Mr. Speaker* declared for the *Yeas*.

*Sir Arthur Haslerigge* declared for the *Noes*.

The House was divided. The *Noes* went forth.

*Yeas* 176. Mr. Raleigh and Mr. Bodurda, Tellers.

*Noes* 98. Sir Arthur Haslerigge and Mr. Neville, Tellers.

So it passed in the affirmative. The main question was put.

Resolved, that it be referred to his Highness the Lord Protector to put the vote of this House concerning the preparing and putting to sea a considerable navy for the safety of this Commonwealth, and the preservation of the trade and commerce thereof, in execution; saving the interest of this House in the militia and in making of peace and war.*

Resolved, that Mr. Secretary Thurloe be desired to carry this vote to his Highness.

*Mr. Trevor* moved to adjourn till Saturday.

Resolved, that the House be adjourned till Saturday morning next, at eight of the clock. The House rose at 11.

* "The secretary gave an account of foreign affairs," says Mr. Bethel, which gave occasion to the country party to bring on, in behalf of the public, a debate concerning the navy, wherein (arguing, that as the navy is part of the militia, and the militia, the then right of the people assembled in Parliament, and that without the militia the Parliament could not make good their promises to the people, in bounding the power of the Chief Magistrate,) they moved that the House would appoint certain Commissioners for the management of the naval forces.

"The debate for setting forth a very considerable fleet to sea, for the honour and defence of the Commonwealth and commerce, held not long, the thing being readily agreed unto by all parties; but who should manage the fleet, was a debate of several days, and at last carried with a strong hand by the courtiers, that the Pretender should have the disposal of it; all that the country-party could get into the question being, that the making peace and war should be reserved unto the Parliament." *Brief Narrative*, pp. 341, 342.

*Saturday, February 26, 1658-9.*

*Mr. Speaker* took the chair at nine.

Mr. Cooper prayed.

*Colonel Terrill* reported from the Grand Committee of the House for Grievances and Courts of Justice, their resolution and opinion touching Mr. John Portman;* that his imprisonment by the Lieutenant of the Tower was, and is, unjust and illegal, and that he ought to be discharged without any fees or charge.†

*Mr. Jessop*‡ made a narrative of the Book of Characters found with the Fifth Monarchy-men, which, with the help of some members now present, he did decipher, and found this Mr. Portman often named in the book.

There was a great deal of humility in it, and often seeking of God. They came to several resolutions to go into arms, told the manner how, and arms and horses prepared. The Mews was intended to be seized on.

His late Highness, now in heaven, was very tender towards them, for that appearance of Christ in them. The commitment was on the account of preserving the peace.

He craved pardon if he had offended.

*Mr. Knightley*. He ought to be proceeded against, if there is any law. The gentleman does not charge any action against him. If any man should come and say I am a Fifth

* See *supra*, p. 449.

† "The Lieutenant of the Tower, Feb. 3, 1657, received a letter from the late Lord Protector, early in the morning, directing him to apprehend Mr. John Portman, amongst others, forthwith. The same day, in the afternoon, a warrant was sent. The same night, or shortly after, Mr. Portman was taken by a lieutenant and about six soldiers, under the command, and by the order and direction of the Lieutenant of the Tower; and hath ever since then remained a prisoner there, without any proceedings had against him." *Journals*.

The letter, "being only from the Usurper Oliver," was thus: "Sir, I desire you to seize Major-general Harrison, Mr. Carew, Mr. Portman, &c. Do it speedily, and you shall have a warrant after you have done." *Brief Narrative*, p. 342. See *supra*, p. 448.

‡ Clerk of the Council.

Monarchy-man, I should be thrown into prison, and never brought to trial in a twelvemonth.

He called the Lieutenant, a Gaoler and a Justice of the Peace.

*Mr. Neville.* There does no cause of his imprisonment appear by the return, so that it is clear he ought to be discharged.

*Serjeant Maynard* agreed.

*Mr. Knightley* and *Colonel White* moved that he might not only be set at liberty, but have his action against the Lieutenant, for against the Chief Magistrate no action lies.

*Sir Thomas Wroth.* It was a high breach of the liberty of the subject. I would have some, of your sense, declare against him that did imprison him upon a bare letter. Here is no more in the case.

*Sir Walter Earle.* You ought, as the first question, to agree with the Committee, and, if nought be to be said afterwards, let them say.

*Colonel Birch.* I cannot agree with the Report, that this business is illegal and unjust. You have had a report, with much tenderness, touching these Fifth Monarchy-men.

He tells you, the character was deciphered, and that this gentleman, or one of his name, was in the business. They were drawing into arms. If they had been under another name, I believe this had hardly come before you; but I will say no more of that.

I can agree that the detainer is illegal and unjust, and against the Petition and Advice; but I cannot agree that the imprisonment was so. There was good cause for it.

*Sir Henry Vane.* The reason why we are so in the dark, is because the whole matter is not before you.

I would have the letter and warrant read, but in that, not a word of what is reported of the character. If the deciphering of a character by any man that shall pretend to be master of it, be enough of evidence, few will escape. The Gatehouse was filled with divers persons upon this score, and they laid in a miserable case, and were released but a little before this Parliament.

Let us do what may show we bear the bodies of Englishmen, and not of slaves. If any be a criminal, let him be brought to speedy justice.

*Mr. Bodurda.* His Highness did this to secure the peace, and there was reason haply for it. But if you please to put the question, to agree with this Committee, I shall concur with it.

*Mr. Godfrey.* I cannot agree with the Committee. Those persons were about to raise arms. The Chief Magistrate's vigilance in this business was not to be blamed. It appears his name was in the book.*

There is a just imprisonment upon suspicion of treason. It is hard to go so far, as to condemn the whole. I cannot agree with the Committee, as to his imprisonment to be unjust; but of the illegality of the detainer, I shall agree.

*Mr. Onslow.* In answer to Godfrey and Birch thus:

If there were justice for his commitment; there was the same justice for his trial. But the proceedings touching his imprisonment are unjust. The letter for warrant is no just ground of his imprisonment. Though the crime were true, no law gives the Chief Magistrate power to commit any man, of his own accord. If any man was committed upon *mandatum domini regis*, it was not of the king himself, but *per significationem privati consilii.* Yet these imprisonments were condemned in the Arguments, *Tertio Caroli* †. This is much higher than ever the King pretended to.

* See *supra*, p. 494.

† In 1627, in the case of Sir John Heveningham, and others who were imprisoned for refusing loan-money, "Sir Edward Coke," according to *Rushworth*, "said: The question is, whether a freeman can be imprisoned by the King, without setting down the cause of it? If he may, it follows, I shall have an estate of inheritance, or for life, or years, in my lands; or property in my goods; and I shall be a tenant at will for my liberty." (See *supra*, p. 121, *ad fin.*)

The Commons "resolved upon the question, *nemine contradicente*,

"1. That no Freeman ought to be detained, or kept in prison, or otherwise restrained, by the command of the King, or the Privy Council, or any other, unless some cause of the commitment, detainer, or

Put the question to agree with the Committee first; and then do what you please, touching the Lieutenant of the Tower, afterwards.

*Serjeant Seys.* I agree with that noble knight,* that it is a dangerous proceeding, to make a man a criminal, by deciphering a book; though I should suspect them to work under ground, like moles.

This letter came at five o'clock in the morning. If there had not been good cause, the Chief Magistrate would not at that time have broken his sleep. I think the detaining, or trying a man upon this ground is hard, and the precedent dangerous; but as to the imprisonment, there are grounds enough for it.

*Mr. Neville.* Admit that by the book of characters, the persons had been guilty of high treason; your question is whether the proceeding be according to law. No cause is shown in the warrant. Every warrant ought to bear in it the crime. A Fifth Monarchy-man is not defined, what it is. Put the question to agree with the Committee.

*Captain Clayton.* I cannot agree that the imprisonment was illegal.

*Captain Baynes* moved that it was illegal.

*Mr. Bacon* moved the contrary.

restraint, be expressed, for which by law he ought to be committed, detained, or restrained.

"2. That the writ of *Habeas Corpus* may not be denied, but ought to be granted to every man that is committed or detained in prison, or otherwise restrained, though it be by the command of the King, the Privy Council, or any other, he praying the same.

"3. That if any freeman be committed or detained in prison, or otherwise restrained by the command of the King, the Privy Council, or any other, no cause of such commitment, detainer, or restraint being expressed, for which he ought by law so be committed, detained, or restrained; and the same be returned upon a *Habeas Corpus*, granted for the said party, then he ought to be delivered or bailed." *Hist. Col.* (1703,) 1. 325. See *Parl. Hist.* (1763,) vii. 377.

This contention with the Crown, for the liberty of the subject, an *avant-courier* of the civil war, produced the next year (1628) the ill-observed royal sanction to the Petition of Right. See *supra*, p. 171, *note**

* "Sir Henry Vane," *supra*, p. 495.

*Mr. Starkey.* I wonder to see the difference amongst the gentlemen of the Long Robe, in their opinions. I cannot say that the imprisonment is legal. The law is otherwise. *Multa tenent facta, quæ fieri non deberent.*

I would not have us mealy-mouthed, but in a Parliamentary way to assert the liberties of the people; which is the great part of bounding the Chief Magistrate.

*Mr. Attorney of the Duchy.* The report is not according to the sense of the Committee, upon the account of the Lieutenant tearing, by soldiers, the prisoner out of his own house. They did not proceed upon the papers, but upon the act of the Lieutenant. Let it go upon the proper sense, and I shall agree with the Committee.

Resolved, that this House doth agree with the Committee. That the apprehending, imprisonment, and detaining of Mr. John Portman a prisoner in the Tower, by the Lieutenant of the Tower, was, and is illegal, and unjust: and that the said John Portman be discharged from his imprisonment in the Tower, without any fees or other charges to be paid by him.*

The Counsel and parties were called into the bar, to hear the case of Neville and Strowde.†

Mr. Finch‡ made a learned discourse in defence of the action, on Mr. Neville's side, and said it was well brought, and no new case. He prayed a *procedendo* in the Common Pleas.

Mr. Green, (for Mr. Strowde.) It is a case *primæ impressionis.* The Judges (as able as ever) were unsatisfied how to pass their judgment in it. A Committee of the last Parliament did conclude that election void. (He recited all the pleading; damages 2000*l.* The Jury have given 1500*l.* damages.)

* "Resolved, that Mr. Speaker do issue his warrant, under his hand, to the Lieutenant of the Tower, for the discharge of Mr. Portman from his imprisonment accordingly." *Journals.*

† See *supra*, pp. 51, 346.

‡ See *supra*, p. 425, *note.* "Mr. Heneage Finch and Mr. Windham, of Counsel with the plaintiff, and Mr. Green and Mr. Wentworth, of Counsel with the defendant." *Journals.*

I shall offer such authority as is fit to insist upon at this bar; I offer nought impertinent here; I should much forget where I am.

It appears that this case, upon the whole matter, concerns the privilege of this House, and here it ought only to be determined. No other Court can meddle with it.

Lord Coke (Instit. part 4,) saith: "It is *lex et consuetudo parliamenti* that must determine matters of this nature; the Judges are not to meddle." The Bishop of Winchester's, and Mr. Plowden's cases, clear this point. The privileges of both Houses are to determine, and not the Judges. 27 Henry VI. in a case between two Lords for precedency, the Judges would not meddle.

Though a Parliament be dissolved, the Judges cannot meddle in any cases happening there. Justice Jones would not meddle. He did declare it as a settled ground and maxim. Take the case wholly, and it will prove only fit for a Parliament, not fit to be determined by an inferior Court. Matters of Election are not properly determinable by strict rules of common law.

In case of non-residency of a Burgess or Knight, *lex et consuetudo parliamenti* dispenseth it, but the Judges must judge by the letter of the law.

It was resolved in this House, that a person might sit in this House, contrary to the opinion of the Judges. I have the case here at large. To serve in Parliament, is certainly a great honour, but it is also an *onus*;* yet the law takes care that the Sheriff do cause the members to appear; which argues the unwillingness of some persons to serve, and therefore there is no particular damage if the Sheriff return them not.

This case being most properly examinable in this honourable House, I shall pray that the whole business upon the merit, be heard here.

* For which the members used to receive a salary. Lord Coke says, "the fee for the knight of any county is four shillings *per diem*, and every citizen or burgess is to have two shillings *per diem*." (4 *Inst.* 46.) *Lex Parliamentaria*, (1690,) p. 124.

Mr. Wentworth, (for Strowde.) I shall show this case is proper for this House. It concerns, as Lord Coke (on Littleton) says, "the very being and heart-strings of Parliament." It is a good ground for a man to judge that an action ought not to lie, where it has never been brought. Thence I may conclude stronger, that no action since the Conquest, 500 years since, was ever brought; so that this cannot properly be brought.

I shall therefore humbly move that the whole business may be heard here, and that it may not be transmitted to the Common Pleas.*

*Mr. Turner.* We are all full of the business; I hope we shall all be of one mind in it.

If you please, to appoint another day, and adjourn now.

*Major Burton.* We sit not here to hear causes at the bar. Let it be sent back again to the judges. Why do they trouble us with it?

*Sir Henry Vane.* We cannot spend our time better than in asserting the liberty of the subject. I am sure it was better employed in thus bounding him,† than in giving him such an unlimited power. Yet I move that it be adjourned till another day, for a final determination of the business.

Resolved, that this day sevennight be appointed for the determining of this cause between Mr. Neville and Mr. Strowde.

*Sir George Booth* and *Sir Henry Vane*, and others, moved that none that were accountable, or were farmers of any tithes, should be of the Committee for maintenance of ministers in Wales. (Query if Colonel Freeman be not one.)

The debate held a long time about wording the question; but at last it was ordered *ut supra*, or to that purpose.‡

* Numerous cases were cited on each side, but the report is too imperfect to be understood.

† Probably the Sheriff.

‡ "Resolved, that no members of this House, that are of the Committee for North Wales and South Wales, and are, or have been, accountable for any of the revenues of the Church, within North Wales or South Wales, or the county of Monmouth; or that are, or have been

*Mr. Onslow.* I move, that before you proceed to bound the other House, you first bound the superior.

*Sir Arthur Haslerigge* (and others). It was agreed that a great deal of time was spent about precedency of those debates, and it was resolved that the other House be first proceeded upon. I therefore would not have us go back again, but proceed upon the debate adjourned. I move that it be taken up on Monday morning, and nought to intervene.

Resolved accordingly.*

Upon information given to the House, that certain articles were ready to be presented to the House, concerning some discourses had, and words spoken, by Mr. Neville, one of the members of this House,†

Resolved, that Tuesday next a sevennight, be appointed to receive and read the articles informed of, to be now ready to be presented concerning any discourse had, or words supposed to have been spoken, by Mr. Henry Neville, one of the members of this House.

Resolved, that the Lord Viscount Falkland‡ shall have leave to go into the country for ten days.

The House did adjourn till Monday morning, and rose at one.

The sub-Committee for preparing of a Bill for ejecting of scandalous ministers, sat in the Inner Court of Wards, and proceeded in parts upon the Bill.

The Committee of Privileges sat in the Star Chamber.

*Serjeant Waller* in the chair.

*Mr. Stone, Colonel Clark,* and *I,* moved for Cousin John Blakiston's Petition to be read, touching the undue return of Captain Lilburne.

It was ordered to be heard on Tuesday come month.

farmers thereof, shall have any vote at the said Committee; and that all others that will come shall have votes." *Journals.*

* "That the debate concerning the bounds and powers of another House, be taken into consideration on Monday morning next, the first business; and that nothing else do then intervene." *Journals.*

† See *supra,* pp. 296—305.

‡ See *supra,* pp. 23, 25, *notes.*

Ordered, that the business of Cheshire be put off for a month.

*Serjeant Waller* moved it, *inter* Bradshaw and Brookes.

*Captain Whalley* moved that the business of Radnor might have a certainty assigned as to the disability of the election, which was ordered accordingly.

The Committee adjourned to the House, where was heard at the bar, by counsel on both sides, the business of Malton.

Mr. Allen was counsel for Mr. Howard and Mr. Marwood; Mr. Green and Mr. Winstanly, for Major-general Lilburne and Mr. Robinson.*

The Commonwealth party strove mainly to make all things right on their side, but it would not be. At last it came to the question. They had but sixteen, and the other at least twenty-six. The debate held till nine.

It was resolved and determined by the poll, that Old Malton has a right to join with New Malton in the election and return of burgesses to sit and serve in Parliament for Malton.

Resolved, that Mr. Howard and Mr. Marwood are duly returned.

Resolved, that the indenture whereby Major-general Lilburne and Mr. Luke Robinson are returned ought to be withdrawn, and taken off the file, and that this be reported to the House.

Mr. Finch was present all the time as a by-stander, being, it seems, unawares, retained on both sides; and so the parties withdrew their fees, and he stood neuter.

Mr. Monerell and other lawyers were there, and Cousin John Blakiston, all as by-standers.

The case was well argued on both sides. Mr. Robinson's and Mr. Lilburne's party intend to move to have it recommitted, but the case is clear enough, in my opinion.

* This zealous republican, Mr. Robinson, on the now approaching restoration of the Long Parliament, of which he was a member, was joined with Mr. Scot on a mission to Monk, to confirm his professed regard to the Commonwealth. Yet see Luke Robinson, on the Expectation of Charles Stuart, in 1660, vol. i. p. 263, *note*.

*Monday, February* 28, 1658-9.

*Mr. Speaker* took the chair at nine.
Mr. Cooper prayed.

*Out of the Journals.*

*Colonel Bennet* reported from the Committee to whom the Petition of Mrs. Elizabeth Lilburne, widow, late wife of Mr. John Lilburne,* deceased, was referred, the proceedings of

* See *supra*, p. 68; vol. i. p. 156, *note* ||; Dr. Towers's *Tracts*, (1796,) ii. 34—36.

John Lilburne died in 1657, at Eltham, where he is said to have "joined the quakers, and preached among them." Though only in his thirty-ninth year, he had suffered, and probably, in some instances, had provoked, numerous injuries, unfeelingly inflicted by the successive powers in possession.

In 1636, at the age of eighteen, he became acquainted with Dr. Bastwick," (see vol. i. p. 372, *note*,) "then a prisoner in the Gate-house, whom he afterwards constantly visited;" though they were in later years much at variance. To print one of that free politician's anti-prelatical MSS., he went over to Holland, "where," he says, "I was divers months, and where the King's ambassador laid for me, as I was informed, several designs to put me a ship-board, and send me over to the Bishops here, for my visible activity there against them, which forced me, continually, to wear my sword about me." *Brit. Biog.* (1770,) vi. 44, 45.

Soon after his return, "he was seized," and referred from "the Council Board and High Commission, to the Court of Star-chamber." There, "he repeatedly refused, with the utmost firmness, to take the oath *ex officio*, or answer interrogatories, and by his noble behaviour on this occasion, acquired the honourable appellation of *Free-born John*." In 1638, he was sentenced to the pillory, which he bravely endured, with whipping from the Fleet Prison to Westminster, "five hundred lashes with knotted cords," and "imprisonment with double irons on his arms and legs;" till, in 1641, the Parliament resolved "that the sentence against Mr. Lilburne was illegal, barbarous, bloody, and tyrannical." *Ibid.* p. 46.

During the war he distinguished himself in the service of the Parliament, especially at Marston Moor. Becoming, however, obnoxious to the House of Lords, in 1646, he was fined "4000*l.* to the King, for ever disfranchised," and for some time imprisoned in Newgate and the Tower. Besides "contempt of their jurisdiction," *Free-born John* had exasperated the Lords, (he says, "made them mad,") by maintaining "that by the

the late Parliament, in January 1651, concerning Lieutenant

laws of England, they had no jurisdiction over commoners, to try them either for life, limb, liberty, or estate." *Ibid.* p. 52.

In 1649, John Lilburne was tried at Guildhall, at the instance of the Council of State of the Commonwealth, and on the prosecution of Attorney-general Prideaux, "upon an indictment of high treason, for writing and publishing seditious and treasonable books." On this occasion occurred the following dialogue, in which it will be generally considered that the prisoner had the advantage of the Court; now that the rights of juries are ascertained and secured by Mr. Fox's Libel Bill, passed, I believe, against the opinions of Lord Kenyon, and nearly all the judges in the late reign, except Lord Camden.

"*Lord Keble.* Master Lilburne, quietly express yourself and you do well. The jury are judges of matter of fact altogether, and Judge Coke says so; but I tell you the opinion of the Court: they are judges of matter of law.

"*Lieutenant-colonel Lilburne.* The jury by law are not only judges of fact, but of law also, and you that call yourselves judges of the law, are no more but Norman intruders; and, indeed, and in truth, if the jury please, are no more but cyphers to pronounce their verdict.

"*Judge Jermin.* Was there ever such a damnable blasphemous heresie as this is, to call the judges of the law cyphers?

"*Lieutenant-colonel Lilburne.* Sir, I intreat you, give me leave to read the words of the law then; (Coke's Institutes, sect. 366;) for to my jury I apply, both in the law and fact.

"*Lord Keble.* Sir, you shall not read it.

"*Judge Jermin.* You cannot be suffered to read the law. You have broached an erroneous opinion, that the jury are judges of the law, which is enough to destroy all the law in the land. There was never such a damnable heresie broached in this nation before."

When the jury, after this extraordinary trial of three days, pronounced an acquittal, "immediately the whole multitude of people in the Hall gave such a loud and unanimous shout, as is believed was never heard in Guildhall, which lasted for about half an hour, without intermission; which made the judges, for fear, turn pale, and hang down their heads; but the prisoner stood silent at the bar, rather more sad in his countenance than he was before."

On some pretence, instead of being discharged, he was remanded "to the Tower," under the guard of "Major-general Skippon," till November 8, when he was released at the instance of Ludlow and others, by an order from the Lord President Bradshaw. He had been attended with "acclamations and loud rejoicing expressions, quite through the streets to the very gates of the Tower, and for joy the people caused that night abundance of bonfires to be made all up and down the streets."

Colonel John Lilburne, deceased, entered in the Journal-book of that Parliament, which were read.*

He farther reported, that the 22nd January, 1658, it was moved by the Council, that his Highness, in respect of Mrs. Lilburne's poverty, would, by his pardon under the great

See "The Trial of Lieutenant-colonel John Lilburne, at the Guildhall of London, the 24th, 25th, 26th October, 1649, taken in short hand," (1649,) pp. 121—123; *State Trials*, (1776,) ii. 69, 151, 153. *Brit. Biog.* vi. 61—66.

* A petition was presented, December 23, 1651, to the Long Parliament, by "Josiah Prymatt, of London, Leather-seller," who charged Sir Arthur Haslerigge with having fraudulently procured the sequestration of his collieries, in Durham, which produced 5000*l.* per annum. He further charged Messrs. Squib, Molyns, Winslowe, and Russell, four of the "Commissioners for compounding," with "having refused to relieve him" after "clear evidence before them," as "not daring to oppose the will and pleasure of the said Sir Arthur."

On the report of a Committee, the House affirmed "the judgment of the Commissioners," and voted the petition "false, malicious, and scandalous;" and fined the petitioner 3000*l.* to the Commonwealth, 2000*l.* to Sir Arthur, and 500*l.* to each of the four Commissioners, with imprisonment in the Fleet till payment.

The House next "proceeded against Lieutenant-colonel John Lilburne, who had confessed at the bar, that he did disperse divers copies of the petition." He was also fined 7000*l.* in the same proportions, and "banished out of England, Scotland, and Ireland, and the islands and territories thereto belonging; to depart within thirty days, and not to return, upon pain of being proceeded against as a felon, and suffering death accordingly."

The next day, "Jan. 16, 1651-2, several passages in a printed book, entitled 'A just reproof to Haberdashers' Hall; or an Epistle, writ by Lieutenant-colonel John Lilburne to four of the Commissioners', were read; which book was delivered to a member of Parliament by Lieutenant-colonel John Lilburne.

"Resolved, that this book doth contain matter, false, scandalous, and malicious, and that all the printed copies of the same be burnt, by the hand of the common hangman, at the same place, and time, with the petition of Josiah Prymatt.

"Jan. 20, 1651-2. Lieutenant-colonel John Lilburne was brought to the bar, but he obstinately denied to kneel. Thereupon he was commanded to withdraw," and it was "Resolved, that an Act be brought in, for enacting the judgement of Parliament against Lieutenant-colonel John Lilburne." *Journals*.

seal, discharge the fine of 3000*l.* imposed on Lieutenant-colonel Lilburne, payable to his Highness and the Commonwealth. That Sir Arthur Haslerigge had, by deed under his hand and seal, released the 2000*l.* given to him; that Mr. Squib, by like writing under his hand and seal, had released the fine set to be paid to him; that Mr. Molyns had referred himself to the award of Colonel Okey and Colonel Bennet, as to the fine set to be paid to him; and that Mrs. Lilburne had likewise submitted to, and undertaken to perform their award; and also, to deliver such papers to Colonel Bennet as she had in her custody, relating to the matters for which the fines were imposed, to be burnt, without keeping any copies of them; that Mr. Winslowe, to whom a fine was likewise set to be paid, was since dead at Jamaica, without any heir, executor, or administrator in England; and that neither himself in his lifetime, nor any other since his death, had ever made any demand of it: that Mr. James Russell, to whom a fine was also set to be paid, was likewise dead, and that the fine set to be paid to him, was never demanded either in his lifetime, or since his death: that Mrs. Russell, his widow, had notice to attend the Committee, but neglected to do it, as not intending to have any benefit by that fine.

He reported also the opinion of the said Committee; That a Bill be brought in, and offered to the House, to repeal the Act of January 30, 1651–2, concerning Mr. Lilburne. *

* He "went over to Amsterdam," where he printed "an apology for himself, and sent it in a letter to Cromwell, wherein he charged him with being the principal instrument in procuring the Act for his banishment." *Brit. Biog.* vi. 68.

In 1653, after a vain attempt "to procure a pass for England, he returned without one, June 14, for which he was tried at the Old Bailey, Aug. 20, upon the Act for his banishment; but acquitted by the jury, for which they were examined before the Council of State," three days after. From the following answer of a juryman, to the Council's extrajudicial interrogatories, it appears that this jury of citizen-shopkeepers were as little disposed as the prisoner, or his jury, in 1649, (or as Fox and Erskine to the *Kenyons* and *Bullers* of a later age,) to concede to the *Kebles* and *Jermins* of the 17th century, that their assumed monopoly of legal jurisdiction was sanctioned by the ancient law of England.

He offered a Bill to that purpose; in regard Sir Arthur Haslerigge, Mr. Squib, and Mr. Molyns, who had fines given them by that act, had remitted them.

"Gilbert Gaynes, of Dunstan's in the West, grocer, saith he was one of John Lilburne's jury, and found him not guilty. Being asked what the issue was, he acknowledged that he was indicted for felony, for coming into England; 'but, that the jury did find as they did, because they took themselves to be judges of the law, as well as of the fact: and although the Court did declare they were judges of the fact only, yet the jury were otherwise persuaded, from what they heard out of the law-books.' He confesseth he did at first differ from the Jury, but was convinced by their reasons." *State Trials*, (1776,) ii. 80, 82.

*Free-born John* had probably conciliated the goodwill of Lord Clarendon, by appealing, on his trial, in 1649, to "that excellent argument of Mr. Hide, April 1641." The noble historian says, confounding however, the trials of 1649 and 1653, "Lilburne appeared undaunted, and with the confidence of a man that was to play a prize before the people for their own liberty.

"He defended himself with that vigour, and charmed the jury so powerfully, that, against all the direction and charge the judges could give them, (who assured them, 'that the words and actions, fully proved against the prisoner, were High Treason by the law, and that they were bound by all the obligation of conscience, to find him guilty;') after no long consultation between themselves, they returned with their verdict, that he was *not guilty:* nor could they be persuaded by the judges to change or recede from their verdict." *History*, (1712,) iii. 502, 503.

"Soon after his trial, Aug. 20, 1653," says *Wood*, "he was conducted to Portsmouth, in order to his conveyance beyond the seas, but by putting in for his peaceable deportment for the future, he returned, fell into the acquaintance of the Quakers, became one of them, settled at Eltham in Kent, where sometimes he preached, and at other times at Woolwich, and was in great esteem among that party." *Wood* then, having noticed his death, (Aug. 29, 1657,) says, "his body was two days after conveyed to the house, called the *Mouth*, near Aldersgate in London, which was then the usual meeting-place of Quakers. Whence it was conveyed to the then new burial-place in Moorfields, where it was interred." *Athen. Oxon.* (1692,) ii. 102.

The *Mouth* was probably a sign of Boulogne mouth, or harbour, which is supposed to have produced the corruption of "Bull and Mouth Street." The "new burial-place" to which the remains of John Lilburne were attended by 4000 persons, and where John Biddle (See vol. i. p. 57) was interred, was not covered with houses till a few years since. It is

*Mr. Knightley.* I move to put off this business till some morning, then bring in a Bill.

*Mr. Bacon.* Before a Bill can be brought in, you must resolve to agree with the Committee.

*Sir Arthur Haslerigge.* I move that you would only declare that the Bill is void, in regard there was no prosecution upon it.

described as, "the New Church-yard in *Petit France*, given by the City, and consecrated June 4, 1617." *Petit France*, about the site of the present Broad Street Buildings, "was so called," according to *Stowe*, "from many French people living there." See "New View of London," (1708,) i. 63, 179.

There are two accounts, by contemporaries, of the four last years of John Lilburne, not easily to be reconciled with the very probable relation given by *Wood*, whose punning prejudice calumniates *Free-born John*, as "having been very famous for his infamy."

Mr. Bethel, without "favour or respect" towards "John Lilburne," contrasts the conduct of Cromwell, in 1653, with that of the Parliament in 1649, by whom he says, incorrectly, (see *supra*, p. 504,) that he "was immediately, according to law, generously set at liberty," while "Oliver kept him in prison until he was so far spent in a consumption, that he only turned him out to die." *World's Mistake*, p. 45.

Lord Clarendon, extending the rigour and injustice of the Protector even a full year beyond the life of Lilburne, says: "Though he was thus acquitted in the year 1653, yet Cromwell would never suffer him to be set at liberty, but sent him from prison to prison, and kept him enclosed there, till he himself died." *History*, (1712,) iii. 503.

Thus opposing parties unite to aggravate the sufficiently numerous wrongs justly imputed to the usurpation of Cromwell. Yet it appears that John Lilburne might freely enjoy air and exercise amidst the rural scenes of Kent, and, resolving not to "learn war any more," was occupying the last days of a harassed and tumultuous life, in teaching the religion of purity and peace, while Mr. Bethel "kept him in prison," and Lord Clarendon, more amplifying, "sent him from prison to prison, and kept him enclosed there;" in the last prison, I apprehend, and that prisons are usually designed to be enclosures.

Dr. Towers observes, that the account given of Lilburne's trial by Lord Clarendon, is, in many particulars of it, a remarkable instance of that want of truth and exactness, which is too frequently discoverable in the writings of that noble historian." *Brit. Biog.* vi. 66. See "The Earl of Chatham" on "Lord Clarendon's History," vol. ii. p. 443, *note*. See also, Mr. Godwin's Estimate of Merits and Defects in the Character and Conduct of John Lilburne. *Commonwealth*, (1826,) ii. 1—24, 411—435.

*Mr. Raleigh.* I move that the Bill be brought in. Mr. Winslowe and Mr. Russell, who had part of the fines, are dead, and no executors to be heard of. Winslowe died in Jamaica; yet, unless they were satisfied, you cannot repeal that part as to them.

*Sir William Wheeler.* You cannot absolutely take their rights away.

*Mr. Onslow.* Such hasty acts of Parliament deserve a repeal. There was no entry nor engrossing of it. If it appears to be an Act, then it will be worthy your pains to repeal it.

*Sir Walter Earle.* You may give order to bring in a Bill to repeal that Act, and then may add what proviso you please, to save Mr. Winslowe's and Mr. Russell's rights, which is but reasonable.

*Sir John Northcote.* You allow it to be an Act, if you order an act to be brought in to repeal it. I doubt it was no Act. It wanted the formality of passing. I believe it was not *ab initio* an Act.

*Mr. Knightley.* I move that an Act be brought in for annulling the judgment and proceedings against John Lilburne, so by that means you do not allow it to be an Act.

Resolved, that a Bill be brought in for annulling the sentence and proceeding had in this House against Lieutenant-colonel John Lilburne, and that a Committee do prepare such a Bill for the House.

Mr. Knightley, Sir William Wheeler, Colonel Birch, Mr. Raleigh, Mr. Swinfen, Sir Anthony Cooper, Sir Walter Earle, Sir John Copplestone, and Mr. Edward Turner, are appointed to be a Committee: and they, or any four or more of them are to peruse the Journal-book of the House on every Saturday weekly, or oftener; and to inform the House (if there shall be cause) concerning the entries of the orders and proceedings of this House, whether the same be duly made and kept, or not.

The order of the day was read touching the bounds and powers of another House.

*Altum Silentium*, a pretty while.

*Sir Arthur Haslerigge.* I move that the Petition and Ad-

vice be read, as to the bounds and powers of the other House.

*Sir Walter Earle* propounded to take the perambulations, or bounds, mentioned in the honourable Petition and Advice.

*Mr. Onslow.* If you bound their powers according to law, I hope you will not forget to look into the good old laws, *Magna Charta*, and others; and not begin with the Petition and Advice, and conclude that a law, which is not yet determined to be a law.

Let us first debate whether the Petition and Advice be a law or no, before we take it for an Act.

*Mr. Starkey.* The chariot of our affairs moves slowly, because one wheel is yet wanting. Every thing invites you to a speedy resolution. I am neither for leaping over hedges and ditches, nor for so much retrospect as to look back upon the old peerage, nor to the right nor left-hand; but to look to the present establishment, the Petition and Advice that settled the other House, for the authority whereof I will say nothing.

I look upon it as the ark that has preserved us in the deluge of anarchy and confusion. I can comply with it, though haply I should not have had a hand in it. Allow it, at least, as a ladder for your building. Afford it a standing, until your fabric be finished.

I find another House embarked with you in this ark. They have honour given them by this Petition and Advice. I know not which is the elder brother. I never knew the House of Commons less honourable, because the House of Lords was right honourable. Do not take from them that patrimony, which their and your common ancestors hath given them. You cannot legitimate yourselves and deny them; you all claim from one common ancestor. We are twins. Why should we strive, therefore, being brethren. Let us not struggle in the womb, to destroy one another. Let us rather, like Harpocrates's twins, live and die together. Let us twist and unite. A three-fold cord is not easily broken. As they are our brethren, let us timely salute them, that so we may go hand in hand together, towards the finishing of a happy settlement.

*Mr. Knightley.* You have a question before you, to bound, but the question is whether you can bound or no.

How should we bound this other House? We go, like men of Gotham, to hedge in the cuckoo. Some talk of *Magna Charta*, and the Petition of Right, and some will have the Petition and Advice to stand in competition with them. I think the Petition and Advice does not set up a House of Lords.

I see you cannot meddle with a horn or a hoof of this other House. They begin to take it ill already, that you come not up to them, if fame be true. Talk here these twelve months, and then say you cannot bound. They do you service. Let us look to our own House, not the other. There is another House already. We are called by writ; the writ says, to consult with the great men and nobles.* I know not where they are; but there are some, and I doubt all our labour without them, will signify nothing.

If we cannot have what we would have, let us have what we can get. Let us stand as we are, and they as they are: else we may sow much, but we cannot reap. Were we tenants in fee, we might say something; but we are but tenants at will, on one foot with them, and have less than they have.

I would have this debate laid aside, else we can do nothing. If you please, let these sit as they are; but let us make a drawbridge, and propound a Bill to take down their number, and for the future, let none be called thither, but such as shall be allowed by this House. If in future we should see any thing in that constitution defective, we may mend it. Declare for the present, as part of the Bill, that no member hereafter be called to that House, but by your approbation, and that no member be chosen out of this House thither, without your consent, and that is my humble motion.

*Altum silentium.*

* According to "the ancient writ," the Commons were summoned, "cum prælatis, magnatibus, et proceribus habere colloquia." See Elsynge's *Antient Method*, (1679,) p. 68.

*Colonel Cox.* I cannot concur with the gentleman that spoke first,* that told you of *Magna Charta*, and a House of Lords. The old House of Lords was taken away by Act of Parliament, which had reason, law, and authority; as good a law as that Act was to take away the single person. If we bring in old Lords, we bring in old lines. You set open the doors. If that House be not taken away, I know not what takes away the interest of the King. If he, which was the fountain of their honour, be laid aside, much more may they be, which do but derive from him.

We talk of the Barons' wars. I have seen the pedigrees of most of the nobility, and there are not above six or seven families left, that can pretend any title from those that were in the Barons' wars.†

If you please by an Act, with concurrence of his Highness, let those that have fought for, and with you, and have stood faithful, be restored, and have right to sit in the other House, not upon any old account, but to have originacy from this House, and none to come in, but by approbation from hence. I would also have a number of men that have been faithful, and ventured their lives, of good estates, that may be a balance; I would have his Highness to present three, and you take one, and likewise you three, and he choose one.

When at the rising of the House, in that Parliament, a Committee was named, touching the explanation of the Petition and Advice, they meddled with this clause concerning the Lords' house, which was not committed to them.‡

As to taking that clause, which put the approbation of the other House in the Protector, I then told the Speaker, I suspected that many of these gentlemen that brought in that clause, had a mind themselves to be called to that House, and feared they should be left out.§ I since find many of them there, I shall not say but they are persons of worth. I

* "Mr. Onslow," *supra*, p. 510.

† It has been said, that there are now only three such families in the English peerage, and that these are Roman Catholics.

‡ See vol. ii. pp. 284, 298.

§ See *ibid.* p. 299.

would have us know the men, before we debate their powers.

*Colonel Terril.* I see we are upon a difficult point, and before we conclude this debate, we must speak plain English, and come to a right understanding.

There are two other Houses already in our eye, besides our own; the one in right, the other in fact; the one *in forma pauperis*, contending with the other, *cum domino manorii;* the right of the one suspended, not extinguished.

While God has given me a tongue I shall speak my mind. I shall not reflect upon those that are in possession.

It is the custom and usage of all nations under heaven, where there are nobles, princes, lords, and grandees, those are the persons that have been ever called to the highest councils, parliaments, diets, and assemblies. This must arise from something of natural right and reason; as being looked on, in all ages, to understand the state of affairs best.

I shall only speak of England. We have history beyond our own records. Look from Brute* to this age. Among

* "Those tales of *Brute* and his Trojans," says Sir William Temple, "are covered with the rust of time, or involved in the vanity of fables or pretended traditions, which seem to all men obscure or uncertain, but to me, forged at pleasure by the wit or folly of their first authors, and not to be regarded." See "An Introduction to the History of England," (1695,) p. 19.

"Of British affairs," says *Milton*, "from the first peopling of the island to the coming of Julius Cæsar, nothing certain, either by tradition, history, or ancient fame, hath hitherto been left us. That which we have of oldest seeming, hath, by the greater part of judicious antiquaries, been long rejected, as being only a modern fable.

"Nevertheless, seeing that oft-times relations heretofore accounted fabulous, have been afterwards found to contain in them many footsteps and relics of something true, I have therefore determined to bestow the telling over even of these reputed tales; be it for nothing else but in favour of our English poets and rhetoricians, who, by their art, will know how to use them judiciously."

Thus are introduced "Brutus and his line, with the whole progeny of kings, to the entrance of Julius Cæsar; disputed facts, the principal author" of which "is well known to be Geoffrey of Monmouth." See "The History of Britain," (1818,) pp. 2, 5.

Romans, Saxons, Danes, &c. the great men of the nation, the barons and nobles have been consulted with in all councils and assemblies, especially in Parliament. Until about 49 Henry III., the stile still run, the King and his nobles, the King and his barons. I cannot say the Commons were then left out, but no notice is taken of them until then.

Since, laws have run in that tone, King, Lords, and Commons. The Chief Magistrate is the same in construction of law as King. The judges would never venture upon a law, without concurrence of all three estates. If there were not King and Lords in a law, they would never do any thing upon it. The Barons were never omitted in any law. The Commons are sometimes not named.

Who were they that stood up and asserted the liberties of the people? Stood they not up for *Magna Charta*, with

In the introduction to his second book of "The Reason of Church Government urged against Prelacy," first published in 1641, just after his return from Italy, *Milton* regrets that while "the Athenians, as some say, made their small deeds great and renowned by their eloquent writers, England hath had her noble achievements made small by the unskilful handling of monks and mechanics." He then considers "what the mind at home, in the spacious circuits of her musings, hath liberty to propose to herself, though of highest hope and hardest attempting; and lastly, what king or knight, before the Conquest, might be chosen to lay the pattern of a Christian hero; if, to the instinct of nature, and the emboldening of art, aught may be trusted; and that there be nothing adverse in our climate and the fate of this age."

About the same time he wrote the *Epitaphium Damonis*, to bewail the death of his friend, Charles Deodati. There, proposing the future occupations of his Muse, with which his willing labours "in liberty's defence" immediately interfered, he thus selects, (v. 162,) the story of Brute:—

> "Ipse ego Dardanias Rutupina per æquora puppes:
> Dicam, et Pandrasidos regnum vetus Inogenias."
>
> "Of Brutus, Dardan chief, my song shall be,
> How with his barks he plough'd the British sea,
> First from Rutupia's tow'ring headland seen,
> And of his consort's reign, fair Inogen."
>
> *Cowper.*

King John and Henry III.* Did not they, in Richard II.'s time, contend and regain their lost liberties for the people? To come to our own times, which we are too apt to forget, when Parliaments were grown contemptible, and no man durst, under less than a capital offence,† mention a Parliament, to move the King to call one; we had then Lords, some twelve at least, yet living, that took courage even whilst the King was in the midst of an army; they went with a paper in one hand, and their lives in the other,‡ to solicit the King to call Parliament. I know there were but a few hairs between life and death as to divers of them. I shall name one, the Earl of Manchester. Judgment had passed. He has lived to see their heads off their shoulders that would have had his head off.§

* See vol. i. pp. 343, 406, *notes*. "The King," says *Raleigh*, "being betrayed of all his nobility, was forced to grant the charters of *Magna Charta* and *Charta de Forestis*, at such time as he was environed with an army in the meadows of Staynes." *Remains*, (1726,) p. 223.

"*Magna Charta*," says *Rymer*, "instead of being superannuated, renews and recovers its pristine strength and athletic vigour by the Petition of Right, [see *supra*, p. 171, *note**,] with our many other explanatory or declaratory statutes. And the Annual Parliament is as well known to our laws, [see vol. i. pp. 403, 404, *ad fin.*] as ever it had been famous among the customs of France and Germany." See "The Antiquity, Power, and Decay of Parliaments. By Thomas Rymer, Esq. late Historiographer Royal." (1714,) p. 55. See also "The Use and Abuse of Parliament," (1744,) i. pp. 81—83.

† I have not been able to find the authority for any prohibition under such a penalty. In 1629, "soon after the Parliament was dissolved," there was a proclamation by the King, declaring that "he shall account it presumption for any to prescribe any time to his Majesty for Parliaments." *Parl. Hist.* (1763,) viii. 390. See *Rushworth*, ii. 6.

Mr. Rymer says, after *Comines*, that "the courtiers of Louis XI. went so far that they called it rebellion to mention a Parliament." See "Antiquity of Parliaments." pp. 32, 33.

‡ *Whitlock* has preserved the petition presented to the King at York, August 28, 1640, and the names of the twelve petitioning peers. *Memorials*, (1732,) p. 36. See also *Parl. Hist.* viii. 491—493.

§ Here is some misrepresentation, probably from an imperfect report, which I know not how to correct. Among the twelve peers, is *Mandeville*. Viscount Mandeville, Earl of Manchester, died in 1642, with-

The Barons were as stout and resolute for the rights of the people then as ever. Of all those twelve, eleven stood right to the cause. There was but one that left you. The Parliament always looked upon him as the best of them that adhered to the King.

There is a statute, 5 Richard II., which enacts, that if any of the Barons do not appear in the Parliament, they shall be amerced; and another, in 31 Henry VIII., that appoints how they shall be placed after their appearance. So that here is custom, prescription, common law, statute law, and reason, for them.

We have forgot, I doubt, what was done in our times. The statute of 16 *Caroli*, for Triennial Parliaments,* enacted

out, as appears, having incurred any hazards from royal displeasure. His son, the justly popular Lord Kimbolton, one of the five members whom Charles would have seized in the Commons' House, and whom he had accused of high treason, succeeded to the title. He was nominated in 1657, to the Other House, (see vol. ii. p. 450, *note**,) but declined the appointment, "and strove, as far as was consistent with his own safety," to bring back Charles Stuart. "This," says Mr. Noble, "was taken so gratefully, that he died at Whitehall, Chamberlain of the Household and Knight of the Garter." *House of Cromwell*, (1787,) i. 376.

For the further invaluable consideration, (if fair fame be a priceless treasure,) which the Earl of Manchester paid to the restored Stuart, for a ribbon, a wand, and a death-bed "at Whitehall," see vol. ii. p. 387, *ad fin.*

* See "Mr. Goodrick," *supra*, p. 352. This Act, like that which displaced it in 1664, and which Charles II. violated, was to prevent the intermission of Parliaments for more than three years, but had no effect to limit their duration.

"Perhaps it would have been better than to pass either of these Acts," says Baron Maseres, "to have revived and enforced the good old statute of 36 Edward III., for having a new Parliament once in every year, or more often, if need be, and to have enacted, that the elections should take place of course, or without any writ from the King, on a certain fixed day, and that the Parliament should meet on another fixed day. Thus the Parliament would appear to be as essential and necessary a part of the government of the nation as the King himself, or the King's Courts of Justice, which do meet on certain, fixed, or known days of the year.

"The practice of proroguing a Parliament to a distant day, without a re-election, (as the learned and patriotic Mr. Granville Sharp informs

that the Lords and Barons shall be called to Parliament. Here is nothing wanting for the establishing of any thing

us,) seems to have begun in the reign of Edward IV., after the people had been so cruelly harassed by the civil wars, that they had no spirit, or perhaps power left, to oppose that dangerous usurpation of their Parliamentary rights by the royal prerogative. But it was afterwards frequently resorted to, by the princes of the *Tudor* family, and by their successors, the *Stuarts*, and has continued to the present day." *Select Tracts*, (1815,) i. 21, 22, *note*. See vol. i. p. 403, *ad fin.*

"It is observable in the course of histories," says *May*, "how much kings, in such limited monarchies as that of England, do in time, by degrees, gaine upon the people's right and privileges: so that those things, which, by the constitution of the government, the people may challenge as due from the prince, having been long forborne, become at last to be esteemed such acts of extraordinary grace, as that the prince is highly thanked for granting of them.

"Such was this case of the Triennial Parliament; as both Houses afterward, when the unhappy division began, and the King upbraided them with this favour, could plainly answer: 'that it was not so much as by law they might require, there being two statutes then in force for a Parliament once a yeere.'

"The King himself also, at the time when he granted that triennial Parliament, could not forbear to tell them, that he put an obligation upon them in doing it which they had scarce deserved." *History of Parliament*, 1647, (1812,) p. 67. See vol. i. p. 404, *ad fin.*

"He told them," says *Milton*, "with a masterly brow, that 'by this Act he had obliged them above what they had deserved,' and gave a piece of justice to the Commonwealth three times short of his predecessors, as if he had been giving some boon, or begged office, to a sort of his desertless grooms." *Iconoclastes*, (1649,) p. 42.

During the debate on this Bill, Jan. 19, 1640-1, the following passages occur. They are in the speech of Lord George Digby, afterwards Earl of Bristol, who soon became a courtier, and appeared in arms against the Parliament:—

"It hath been a maxim among the wisest legislators, that whosoever means to settle good laws, must proceed in them with a sinister opinion of all mankind; and suppose that whosoever is not wicked, it is for want only of the opportunity. It is that opportunity of being ill, Mr. Speaker, that we must take away, if ever we mean to be happy; which can never be done but by the frequency of Parliaments.

"No State can wisely be confident of any public minister's continuing good, longer than the rod is over him.

"Let me appeal to all those that were present in this House at the agitation of the Petition of Right; and let them tell themselves truly,

which we have made to supply our Solemn League and Covenant. So here are both civil and sacred obligations. Give me leave to put you in mind of a military one too, at Sion-house. A noble person,* I believe, remembers it; it was a declaration sent up to the Lords by Sir Hardress Waller.†

of whose promotion to the management of affairs do they think the generality would, at that time, have had better hopes than of Mr. Noy and Sir Thomas Wentworth; [Earl of Strafford,] both having been at that time, and in that business, as I have heard, most keen and active patriots; and the latter of them, to the eternal aggravation of his infamous treachery to the Commonwealth be it spoken, the first mover and insister to have this clause added to the Petition of Right: 'That for the comfort and safety of his subjects, his Majesty would be pleased to declare his will and pleasure that all his ministers should serve him according to the laws and statutes of the realm.'

"And yet, Mr. Speaker, to whom now can all the inundations upon our liberties, under pretence of law, and the late shipwreck at once of all our property, be attributed more than to Noy; [see vol. ii. p. 444, *ad fin.*] and all those other mischiefs whereby this monarchy hath been brought almost to the brink of destruction, so much to any as to that grand apostate to the Commonwealth, [see vol. ii. p. 442, *ad fin.*] the now Lieutenant of Ireland?

"The first, I hope, God hath forgiven in the other world; and the latter must not hope to be pardoned it in this, till he be dispatched to the other." See "Use and Abuse of Parliaments," i. 84, 85; *Parl. Hist.* (1763,) viii. 120, ix. 200, 201.

* Lord Fairfax. It was presented, Jan. 17, 1647, on the Lords having agreed "to the votes sent up" from the Commons, "that no more addresses be made to his Majesty;" signed "John Rushworth, Secretary; by the appointment of his Excellency, Sir Thomas Fairfax, and his Council of War." See Rushworth's *Hist. Col.* (1708,) vi. 331; *Parl. Hist.* (1755,) xvi. 497; Sir William Waller's *Vindication*, (1793,) pp. 195, 196.

† In 1656, one of the members for Ireland, (where he had been chiefly engaged in military service during the war,) and also in this Parliament, though probably he had not yet taken his seat. He appears to have been in great favour with the Cromwells, and was as fully engaged as any of the High Court of Justice in the judgment on the King. Yet, on his arraignment in 1660, as may be seen in "The Trials of the Regicides," he prevailed to save a life, probably soon closed in prison, by professions of penitence which have been little credited either by royalists or republicans.

"It was contrived," says *Ludlow*, "that Sir Hardress Waller, (who was known to be a man that would say any thing to save his life, and

Their declaration was that the Army will support the Lords' House, and the words are "live and die with it."* All were protestations to preserve rights of Parliaments.† But, the right being theirs, they are now blown up by I know not what nor whom. The act for perpetuating the Parliament, saith that the Lords' House shall not be adjourned nor dissolved without their own consent in Parliament.‡ What is wanting to preserve them?

was prepared to that purpose,) should be first demanded whether he were guilty or not guilty; which being done, he, after a little shifting, according to the expectation of the Bench, pleaded guilty, taking the blood which had been shed during his employments in the army upon his own head." *Memoirs*, (1699,) iii. 61.

The late Rev. Mark Noble, as sensitive on King Charles's execution as Bishop Horsley himself, (see *supra*, p. 422,) has interspersed his biography of the King's Judges, amidst an ample adulation of "the royal Martyr," with reproachful epithets on the *anti-Stuarts*, which appear almost ludicrous to an unimpassioned enquirer into a disputed passage of remote history. The reverend author probably designed thus to atone for the "Memoirs of the Protectoral House of Cromwell." Yet on this occasion, while he suffers Ludlow to pass from his pen to posterity, with merely the unattested charge of misrepresentation, from excessive republican partiality; he thus describes his military and judicial associate, Sir Hardress Waller, the professedly penitent regicide:—

"That he was a very deceitful, base character, is undoubted. He had been untrue and treacherous to every party; and had there been ten times as many, and each had become uppermost, he would have declared for them. There were few better, or more fortunate commanders in an age of arms, than he was, nor few more infamously deceitful or treacherous men, in a period when human nature was more disgraced by those passions, than at any other during a long succession of ages." See "The Lives of the English Regicides." (1798) ii. 297, 299.

* Sir W. Waller says: Sir Hardress "came, with divers of the officers to the bar, and there, in the name of the whole army, avowed their resolutions to live and die with their Lordships." *Vindication*, p. 196.

† "That they hold themselves obliged, in justice and honour, to endeavour to preserve the peerage of this kingdom, with the just rights belonging to the House of Peers, and will really, in their places and calling, perform the same." *Parl. Hist.* xvi. 497.

‡ "That this present parliament, now assembled, shall not be dissolved, or prorogued, unless by Act of Parliament passed for that purpose: and that neither the House of Peers, nor Commons, shall be adjourned, unless by their own order." *Hist. Col.* (1708) iv. 86.

I cannot wholly blame them, that took them away; they had a government in their eye, which they could not set up till that House was taken away; a Commonwealth which they did not live to finish. And that House was then a block in their way, necessary, in order to that undertaking, to be

This Bill was passed by Commission, May 10, 1641, with the "Act of Attainder" against the Earl of Strafford. "Great censures," says *Whitlock*, "were passed upon the King's passing of both these Bills; that the one was against his most faithful servant, and the other against himself." *Memorials*, (1732,) p. 46.

"It is impossible," says Sir Philip Warwick, "to think how so intelligent a person as the King was, should by any persuasions, which certainly were great on the Queen's side; or treachery, which certainly was great, on the side of many of his great courtiers; be induced thus to divest himself of all majesty and power; or to be so overseen, as to think he should avoid danger by running into the greatest hazard imaginable." *Memoires*, (1813,) p. 200.

"This Bill," says *May*, "was a thing that former ages had not seen the like of; and therefore, extremely was the King's grace magnified by those that flattered him: but it was much condemned by others of his friends, who hated Parliament and Reformation, who complained that the King had thereby too far put the staff out of his own hands. But many men, who saw the necessity of such a concession, (without which no money upon the public faith could be borrowed,) did not at all wonder at it, saying, that as no king ever granted the like before, so no king had ever before made so great a necessity to require it.

"But some men were of opinion that it was not of security enough to make the kingdom happy, unless the King were good: for if he were ill-affected, he had power enough still to hinder and retard them in any proceeding for the good and settlement of the Commonwealth: and so by time and delays, to lay a greater *odium* upon the Parliament for not satisfying the people's desires, than if they had not had that seeming power to have done it: which proved in the conclusion too true, when the King by such protraction of business, not at all concurring with them in the main, had raised a party to himself against them, to cut asunder that knot by the sword, which by law he could not untie. *Breviary* (1650) in Maseres's *Tracts*, (1815,) 1. 30.

This "Act for Perpetuating the Parliament" in defiance of the King's authority, was according to *Milton* "a testimony of his violent and lawless custom, not only to break privileges, but whole Parliaments; from which enormity they were constrained to bind him, first of all his predecessors: never any before him having given like causes of distrust and jealousy to his people." *Iconoclastes*, p. 43.

removed. I shall not speak for nor against it. Possibly if that government had been finished, it might have been good for the people. All governments are alike by divine law.

But what is it which that Act saith or doth? (here he recited the Act of 1648,) when a Parliament then consisted of two Houses, as well *de jure* as *de facto*. One says* it is enacted by Parliament, and yet one of the two Houses never consented to it. It was inconsistent for one House to say the other was useless. Might not the House of Lords have said the same of this House, the Commons. There was a contradiction in it. I say nothing of them that did it; they having another thing then to do.

The Lords were never called to any trial, never accused, nor impeached for any thing they had done; yet they must be laid aside. It was not the law of the Romans so to do.

I can mind you of nothing done by these Lords, but I shall tell you how, in the latter time of Henry VIII., there was a person whose name was* and is famous, one Cromwell,†

* "Colonel Cox." *Supra* p. 512.

† "Whose sudden downfall," says Bishop Godwin, "there want not those who attribute it to God's justice, inflicted on him for the sacrilege committed in the subversion of so many religious houses. And indeed, even they who confesse the rousing of so many unprofitable epicures out of their dennes, and the abolishing of superstition, wherewith the divine worship had by them been polluted, to have been an act of singular justice and piety, do, notwithstanding, complain of the loss of so many stately churches dedicated to God's service, the good whereof were no otherwise employed, than for the satisfaction of private men's covetousnesse. [See *supra*, p. 203.] But *Sleidan*, peradventure, comes nearer the matter, touching the immediate cause of his death:—

"The King of England beheadeth Thomas Cromwell, whom he had, from fortunes answerable to his low parentage, raised to great honours. Cromwell had been procurer of the match with Anne of Cleve, but the King loving Catharine Howard, is thought to have been persuaded by her to make away Cromwell, whom shee suspected to be a *remora* to her advancement." The Bishop adds, "The actions of kings are not to be sifted too neerely, for which we are charitably to presume they have reasons, and those inscrutable." *Annales of England*, (1630,) pp. 175, 176.

This style of reserve, in sifting "the actions of Kings," is quite be-

who was attainted of treason by the Lords' House, and lost his life. He was condemned, though never brought to trial;* a brand for ever upon that Parliament.

coming a prelate of King James's court, though exceeded in 1560. Elizabeth had retained in her chapel a crucifix, and proposed to preserve such in churches, with images of Mary and John. "Protestant Bishops and Divines" expostulate with the Queen, and thus conclude: "Not in any respect of self-will, stoutness, or striving against your Majesty, for we confess that we are but *canes mortui aut pulices* [dead dogs or fleas,] in comparison." *Records*, See Burnet's *Reformation*, ii. 316.

"The King," England's first *Defensor Fidei* (see *supra*, p. 486), is described by Bishop Godwyn as now "like a torrent bearing all before him. Three Divines being condemned for heresie, were committed to the torments of the mercilesse fire. At the same time and place, three other Doctors of Divinity were hanged for denying the King's supremacy; the sight whereof made a Frenchman cry out, *Deus bone! quomodo hic vivunt gentes? Suspenduntur papistæ comburentur antipapistæ.* Good God! how do the people make a shift to live here, where Papists are hanged, and Antipapists burned?" *Annales*, pp. 177, 178.

Buchanan witnessed these horrible scenes, and they drove him into France. Speaking in the third person, he says (1539), "In Angliam contendit: sed ibi tum omnia adeo erant incerta, ut eodem die ac eodem igne utriusque factionis homines cremarentur." *Vita, ab ipso scripta biennio ante mortem*, prefixed (1764), to *Rerum Scoticarum Historia*. (He went into England; but there every thing was so uncertain, that men of each faction were burned on the same day, in the same fire).

* "Our King," says Lord Herbert, "now judged him no longer necessary. Therefore he gave way to all his enemies' accusations, and caused him to be arrested at the council-table by the Duke of Norfolk, when he least suspected it; to which Cromwell obeyed, though judging his perdition more certain that the Duke was uncle to the Lady Catharine Howard, whom the King now began to affect. The news whereof, and his commitment to the Tower, being divulged, the people, with many acclamations, witnessed their joy; so impatient are they usually of the good fortune of favorites arising from mean place, and insolent over the ill.

"It cannot be denied but the crimes whereof he was attainted in Parliament were great and enormous, and such as deserved the most capital punishment; though, as he was not permitted to answer for himself, the proceedings against him were thought rigorous; but so few pitied him that all was easily passed over." See "The Life and Reign of King Henry VIII.," (1740), pp. 391, 392.

"He had," says Bishop Burnet, "the common fate of all disgraced ministers. His friends forsook him, and his enemies insulted over him;

Sir, there is something of the hand of God in it, that one of that name* should have a hand in revenging of that blood

only Cranmer stuck to him, and wrote earnestly to the King in his favour. But the King was now resolved to ruin Cromwell, and that unjust practice of attainting, without hearing the parties answer for themselves, which he had promoted too much before, was now turned upon himself." *Reformation*, (1728,) i. 234.

Among Bishop Burnet's *Records*, is a letter from Lord Cromwell to the King, in a strain of abasement, dictated probably by the vain hope of life. It thus concludes: "Written at the Tower, with the heavy heart, and trembling hand of your Highness's most heavy, and most miserable prisoner and poor slave. T. C. Most gracious Prince, I cry for mercy! mercy! mercy!" *Biog. Brit.*, (1789,) iv. 471.

How pitiably abject appears this fallen favourite of a merciless prince, compared with his contemporary, Sir Thomas More, who "bravely withstood the brutal tyrant's rage," or with those judges of Charles I., who calmly endured, as conscious of an honourable, though disappointed purpose, the barbarous retaliations of the triumphant royalists. See *supra*, pp. 110, 111.

Bishop Burnet, in his *Additions*, says: "It was thought they had once designed to burn Lord Cromwell as a heretic, and that these considerations made him so humble." "It appears," the Bishop adds, "how diligent and exact a minister he was, by those many memorandums which remain of his, upon all affairs which he was to lay before the King." *Reformation* (1719), iii. 105, 106.

* The Protector, as it is now, I believe, generally agreed, was also of the same family, being descended from a sister of Lord Cromwell. See Mr. Noble's *House of Cromwell* (1787), i. 1—6, and the *Genealogy* prefixed. *Raguenet*, whose *Histoire*, however, is too often fabulous, thus describes the Protector's lineage:—

"C'est de la sœur de Thomas Cromwell, que descend Olivier. Elle épousa un, nommé Williams, dont elle eut un fils qui fut appellé Richard; et ce fils ayant été avancé à la Cour par son oncle, durant le tems de sa faveur, prit le nom de Cromwell, en reconnoissance. Il ne le quitta point après la chute de son protecteur, et il le fit même porter à son fils Henry, et à Robert, son petit fils, qui fut le père de notre Olivier Cromwell, dont par consequence le veritable nom est celuy de Williams." *Histoire d'Olivier Cromwel, à Paris.* (1691,) i. 16.

It was, I apprehend, fashionable in the court of the Protectors to derive their pedigree directly from the Earl of Essex, and for this purpose to annihilate that nobleman's son, Gregory Cromwell, whom Henry VIII. restored to the peerage a few months after his father's execution.

"The Lord Thomas Cromwell," says S. Carrington, a panegyrist rather than a biographer, "dyed without heirs male, leaving one only dangh-

which was so unjustly taken away, by setting aside that House which was so guilty of that illegal judgment. I suppose this House was not altogether innocent of the same Act,* for it hath been sensible to purpose of the same punishment, for it is well known how even this House also was dismembered and dissolved by the same person.

A late author says that a Grand Jury may as well vote down the Judges; the Commonalty of London vote down the Lord Mayor and Aldermen; nay, the judges in Westminster-hall vote down this House; as this House the Commons vote down the Lords. They were the superiors.

The King, indeed, was the fountain of the honour. They had their right to sit there only by grant from the King;

ter, espoused to one Mr. Williams, a gentleman of Glamorganshire, of a good family. She was the lively representative of her father, and the very portraiture of his great soul, as the Lady Claypool was of his late Highness the Lord Protector."

Then follows an unattested and improbable story, how "Mr. Williams made his appearance before the King in deep mourning, like a dark cloud eclipsing the sun at noonday;" Henry "was surprized and offended," yet, which is the most difficult to credit, sent Mr. Williams away with his head on his shoulders.

"Some while after, troubles arising," the king's marble heart was softened by remorse, finding the want of such a minister of state as Lord Cromwell, "whose life he had so inconsiderately taken away." Then "calling to mind the action and discourse of Williams," at the time of his "so unseasonable apparition," Henry "sent for him up to court, and commanding him to take the name of Cromwell, he invested him with all the offices and charges the late Lord Thomas Cromwell enjoyed near his person." Thus the biographer deduces "his late Highness and our present Lord Protector," from the heiress of Lord Thomas Cromwell. See "The History of the Life and Death of his most Serene Highness Oliver, late Lord Protector," (1659,) pp. 253—255.

It has been not improbably conjectured, "that an agreeable history enough might be made of Cromwell, without one word of truth in it, except a few public transactions; and all taken from historians." *Biog. Brit.* (1789,) iv. 521.

* "He had such enemies in the House of Lords," says Bishop Burnet, "that the Bill of Attainder was dispatched in two days, being read twice in one day. In the House of Commons it stuck ten days." *Reformation*, p. 234.

either by patent, or Parliament-writ. But when this was done, the King himself could not recal it.

*Quo ligamine quid ligatur, dissolvitur.*

If a Parliament do it, I say then it was legal.

The House of Commons did, in 48, declare that the House of Lords being by necessity taken away, the protestations were to be dispensed with. I would have you declare that they are of force now.

I move to restore the old Lords to their ancient right, and I hope in time you will repeal that Act made against them; for two Houses being in our eye, we are obliged to set up that which hath most right. It is right that shall lead me, and will lead me through the world. When what I said before is unsaid, it may receive a reply. I shall say nothing against the other House in possession; and I presume they will not take it ill, that I spake for those that have a right by all laws in the world.

I therefore move to fix upon one of those two Houses before you go on to bound them.

Consider which shall be the House first, and then let us debate the powers. I would have the old peers restored.

*Mr. Attorney-general.* I shall not suppose whether Charles Stuart be at the bottom of this debate or not. But let us well consider whether Charles Stuart be well gone or no. If all the laws, constitutions, civil and sacred, which concern the Lords' House be yet in force, I am sure none are disabled, and that law which concerns Charles Stuart is not yet void. You must leave the Chief Magistrate to come in as he can, and the old Lords are in already. I know not how you can refuse any of them. Consider whether in prudence you can admit this. Peerage will necessarily bring in regality, high and great enough.

Admit this argument; and nought has been done since 48 that is good. All public lands, sales, &c. are gone.

I cannot say there is a custom or prescription for what we are now under. I hope none will, by a side wind, lay all things aside that have been done and settled since.

Let us speak plainly out. You need not bound them. Then each House will call their own members. You must not touch their members. As affairs are now, many of the ancient peerage are beyond sea.

I hear no man move directly for Charles Stuart; but it is all one to me if that be at the bottom of it. If you bring in one, I know who will bring in the other.

There are laws, and I hope they will pass, and be taken for laws till you declare otherwise. Else from 42 to 48, from thence to 52, from thence to 53, and from thence, hither,—all are void.

I shall speak for the safety of the nation. This other House now in being will be of great security to this nation.

This House, that sits here, is but in the nature of a servant at will, dissolvable, here to-day and another by to-morrow. You would have such a body as would be engaged with you clear through.

Now the other House, which in my judgment you should make and mould, I think you should take in such as have been faithful to you. I know not why the next Parliament may not be all, or most of them, the sons of Cavaliers, and if the other House be so too, where are you.

Therefore I offer it, as our security, to take first into consideration the House now in being, those persons that sit there; and then declare that for the future, none shall sit there but such as shall be approved by both Houses; not to dispute the right, but, as your present condition is, to build upon this House now in possession. Let us not now think what was the ancient right, but what is best for the good and safety of the nation.

*Colonel Terrill* moved to explain himself.

*Sir Walter Earle* moved he might speak.

*Colonel Terrill.* I am not against those that are in possession, if his Highness and this House please; but that they may sit there only for the sakes of those that stood faithful to you. I would have us build upon that rock, the old foundation, and admit such of the old Peers as you shall think fit. This is that which I drove at.

*Sir George Booth.* I rise up to correct that mistake of Mr. Attorney-General, that if you admit these Lords that are capable, you break in upon all that has passed since 48.

We are obliged to Mr. Attorney-General, who tells us plainly that we are upon a new foundation; that he would have this House in being to be the other House. We must admit of that, and none other. If this be so, I pray, Sir, what becomes then of *Magna Charta* and the Petition of Right, which make Englishmen freemen, and not slaves. Must they either be fought over again or shamed, they hanging but upon the bare thread of this Petition and Advice, which is disputable.

I do not know how in justice you can lay that blemish upon those persons that have so eminently served you, to lay them aside. If the inconveniency be great to admit them, you may answer, "If there be danger on that side, there is as much danger on the other." My motion is, that those that have been faithful to you may be this House of Lords, not exclusive of others.

I know very few of the other.

I have heard that some of them have taken strange things upon them, at other times, as Major-generals, to meddle with difference of *meum* and *tuum*.* There hath been such per-

* "Cromwell's deserting his Major-generals in their decimations," says Mr. Bethel, "crying out most against them himself, when he only had set them at work, because questioned by his assembly, is not to be forgotten." The immediately following sentence may serve to enhance the value of the writer's testimony (*supra*, pp. 63, 64) to the economy and successful vigour of the republican administration. It also discovers the accommodating principle of the political morality professed by Mr. Bethel, after "the restoration of his Majesty," and that, though never "injured or disobliged by Oliver," he could bring against him "a railing accusation," unbecoming a writer, Mr. Bethel says, according to his own self-appreciation, "clear from the vices of envying virtue in any, how contrary soever in judgment," or of being "unwilling to allow every one their due commendations."

"I would not be understood to remember any thing here in favour of the Long Parliament, for what might be wicked in him might be just as to them. And though, if what he did had been for the restoration of

sons in this nation, in military employments, that have told men that the law was in their breasts. If any such be in the other House, they will be fit to revive and put in execution that doctrine again.

There was a difference between two states of Italy. The Pope, as a common father, desired to reconcile the difference, and moved them to refer themselves to him, to compose the matter. They both refused his mediation. The Princes said to the Pope, "You have the spiritual sword; we have only the temporal sword. If we give you both, you will be too hard for us." I doubt this may prove so. If you will put the civil sword into the hands of those that have the military sword too, I think it cannot be safe for you.

Let these persons that have not forfeited (some aspersions upon them, I wish they had been spared,) let them be your foundation, and take what other in, you please.

*Colonel Clark.* I wish we may come well off. It is said the Petition of Right and *Magna Charta* are laid aside. He might as well have said you wanted one of the triple cords,* the King. I would have been glad to have heard his reasons for it. Then all other laws are laid aside. I would gladly hear his reason.

The best argument is that of right. He says it is fundamental in all nations, to call those nobles.

Every nation hath a power within themselves, to alter the government as they shall think fit.

If every nation have that right, so God does please to order the opportunities, and the powers, towards the alteration of constitutions. And be it right or wrong, if it be once done, I have nothing to say against it. One power outs and alters another. The plea of right is out of doors. By God's disposal they are gone. Let us see our constitution

his Majesty, he might have been excused, yet being for his own single advancement, it is unpardonable, and leaves him a person to be truly admired for nothing but apostacie and ambition, and exceeding Tiberius in dissimulation." *World's Mistake*, pp. 31—50.

* See, on "a strong treble cord," *supra*, p. 3, *note**.

explained in the Petition and Advice. The sole question is now, whether we shall reject this House in being and possession, and restore the old Lords.

We have beaten the bush, and not come plainly to the point. Seeing there is another House in the room of that House of Lords, why may not we have the same good of that House as of the other House of Lords?

By law they stand, and if it be intended to remove them, it must be by Bill. You have declared the Parliament to consist of two Houses. Thus, another House is in being by your constitution. It is so clearly argued, that if it be denied, you must grub up all your constitution, and make an earthquake in the nation. I would fain hear it reasoned, that the constitution in possession is a nullity, and void.

The old Lords that did you service, were exceeding raw and few. The Earl of Manchester* is in now.

You have been pleased to vote another House. I think it is in as good hands as you can put it.

This House is a fluid body. God knows who you shall see here next Parliament; and unless the other House be faithful and fixed to your interest, I doubt the consequence.†

I would have the question put, that the House in being shall be the other House.

*Mr. Jenkinson.* I second that motion

*Mr. Gewen.* The Parliament shall consist of two Houses; but whether the ancient peerage, or the other House now sitting, shall make the constitution of the Parliament, is the question.

Those I conceive are not in, by law. The power was only given to the late Lord Protector, and not to his successor; and therefore, admitting it to be a law as to other things, to this it is not.

It was moved by Colonel Terrill, that any man would answer what he had formerly objected, that the other House was fallen for want of the word successors. If that be so, we need not stand upon it; not that I would exclude those gentle-

* See *supra*, pp. 515, 516 *note*. † See *supra*, p. 526.

men that are there. They that sit, may come in; but I would have them laid upon the old Lords, as their basis and foundation. It is just and right, and their inheritance, that those that are capable should be restored. But if you take upon you to make another House, you cannot make them co-ordinate, but subordinate, and as you set them up, you may pull them down.

God forbid but the public sales should be confirmed. That argument* may be answered.

As to bringing in Charles Stuart, the argument is against it. If you exclude these Lords, you put them upon joining with that interest: into councils for him, from great provocation. Diseases of the spirit are the worst diseases. *Manet altâ mente repostum.*†

This House will be (as our Saviour says‡), piecing an old garment. You are bound by your oath to maintain the rights and liberties of the people.

I think it is as much in your power to restore the old House, as it was in those that took them away. The arguments from the inconvenience seem nought with me.

If you please to declare, that of right the ancient peerage ought to be the other House, I mean those that have not forfeited; and let his Highness add whom he pleases.

Declare that the ancient peerage ought to be the other House.

*Mr. Fowell* undertook to answer Colonel Terrill, touching the want of the word "successor."

Saving his favour, he is much out of the law as to that. He instanced in a bishop, a parson, and the master of an hospital.

The case differs. Acts of Parliament must be interpreted by the law-makers. If the King grant aught, he is a corporation, and never dies, without the word successor. The oath is to be true to the Protector and his successors, and if it had not been expressed, he should call Parliament, notwithstanding the want of the word "successor."

* *Supra*, p. 525. † *Æneid*, i. 30. ‡ *Luke*, v. 36.

The Act must be interpreted according to the meaning of it, which appears plainly in many paragraphs, to entitle the successor to the nomination of this other House. Besides, a grant heretofore made to the King, without successors, had been good to his successors.

The Protector is King of England, to all intents and purposes whatsoever. There is express authority in the point, in Penruddock's* case, who was adjudged a traitor within the

* See vol. i. p. 231 ‡. Generosum sanguinem effudere complures," says Dr. Bates, "securi apud *Sarisburiam* percusi, et *Exoniæ* aliquot, *Penruddockius, Grovius, Lucasius;* et alii quos æternitati commendare par esset, suspendio periêre, statuas promeriti." *Elenchus,* (1676,) p. 286. (Generous blood was now freely shed. Some fell by the axe, at Salisbury and Exeter, Penruddock, Grove, Lucas; and others deserving eternal remembrance, perished on gibbets, though they had merited statues.)

"In aggravation of their crimes," says *Ludlow,* "it was urged that this was their second offence of this kind, and that it was committed against much favour and kindness. To this they answered, that they did not rise against those who had extended that favour to them, but against a person who had dissipated those men, and established himself in their place. And I cannot tell by what laws of God or man they could have been justly condemned, had they been upon as sure a foundation in what they declared for, as they were in what they declared against. But certainly it can never be esteemed by a wise man, to be worth the scratch of a finger, to remove a single person acting by an arbitrary power, in order to set up another with the same authority." *Memoirs,* (1698,) ii. 517, 518.

This design of restoring an unlimited monarchy, in the person of Charles Stuart, sufficiently appears from Colonel Penruddock's own account of his trial, the only account probably now remaining. In his speech on the scaffold, he does indeed describe the cause in which he was about to suffer, as comprehending not only his "lawful King" but "the liberty of the subject, and privilege of Parliaments." He also invites "all true Englishmen to stand up as one man, to bring in the King, and redeem themselves and all this poor kingdom, out of its more than Egyptian slavery." Yet it seems evident, from the following assertion of unqualified regal power, as his defence against the charge of being "guilty of High Treason," that he considered, as declared in the Liturgy of "the Church of England," that God is "the only Ruler of Princes," exactly the doctrine of the *Patriarcha;* and that "the liberty of the subject, and privilege of Parliaments," are boons to be expected

statute of 25 Edw. III., for attempting the life of the Protector, because he had indeed the kingship, as if it had been against a Queen Regnant.

and gratefully acknowledged, from the Crown, rather than rights to be justly claimed and perseveringly vindicated by the people:—

"My actions were for the King, and I well remember what *Bracton* saith: 'Rex non habet superiorem nisi Deum; satis habet ad pœnam, quod Deum expectat ultorem." And in another place he saith: 'Rex habet potestatem et jurisdictionem super omnes qui in regno suo sunt. Ea quæ sunt jurisdictionis et pacis, ad nullam pertinent, nisi ad regiam dignitatem; habet etiam coercionem, ut delinquentes puniat et coerceat.' Again he saith 'Omnes sub rege, et ipse nullo nisi tantum Deo.' This shows us where the true power is."

When Colonel Penruddock alleges, "neither is there any such thing in law as a Protector, for all treasons and such pleas are *propria causa regis;*" the President of the Court says: "Sir, you are peremptory; you strike at the Government; you will fare never a whit the better for this speech."

This presiding judge was Serjeant Glynn, whom we have seen, like Serjeant Maynard, ready to become a prosecuting crown lawyer, under the restored Stuart, and to pursue his royal master's business, through primrose paths or miry ways, *per fas aut nefas*, just as the *via regia* might happen to direct.

The Attorney-general who now prosecuted, was Prideaux, who has just been unmasking the delegates from Charles Stuart to this parliament, (*supra*, p. 525,) and to whom Mr. Fowell might now particularly address this case of Penruddock. The Colonel thus brings together his prosecutor and himself:—

"Mr. Attorney made a large speech in the face of the Court, wherein he aggravated the offence with divers circumstances; as saying I had been four years in France, and held a correspondency with the King my master, of whom I had learned the popish religion: that I endeavoured to bring in a debauched, lewd young man, and to engage this nation in another bloody war; and that if I had not been timely prevented, I had destroyed them (meaning the jurors,) and their whole families. I interrupted him and said:—

"'Mr. Attorney, you have been heretofore of counsel for me; and you then made my case better than indeed it was. I see you have the faculty to make men believe falsehoods to be truths too.'

"*Attorney-general.* Sir, you interrupt me. You said but now you were a gentleman.

"*Colonel Penruddock.* I have been thought worthy, heretofore, to sit on the Bench, though now I am at the bar.

Since the Conquest we never had but one King:—the King never dies.

No power is given to the other House but negative, and, in all things else, to go according to the ancient usage. They are the old House, they have only changed the names. Though new members, they are the old House. I move that you would transact with them as another House of Parliament, and add the old Lords to the new House.

"Mr. Attorney proceeded in his speech, and called the witnesses. Then I said:—

"'Sir. You have put me in a bear's skin, and now you will bait me with a witness.'" *State Tryals*, (1776,) ii. 261.

This account of "the Trial of Colonel Penruddock" is concluded by a very interesting correspondence; the only passages indeed, which can now be attractive, except as contributing to the exactness of history. The Colonel's wife had written to him a most affectionate letter, dated "May 15, 1655. Eleven o'clock at night." on the eve of his execution. I subjoin his answer, not without regret that a husband and a father, so well prepared to enjoy and to enhance the true felicities of life, should have sacrificed himself in the midst of his days, and especially on such an unworthy occasion as the attempt "to bring in a debauched, lewd young man," and thus to vitiate his country, *ad Regis exemplum*.

"Dearest, best of creatures,

"I had taken leave of the world when I received yours. It did at once recall my fondness for life and enable me to resign it. As I am sure I shall leave none behind me like you, which weakens my resolution to part from you; so when I reflect I am going to a place where there are none but such as you, I recover my courage. But fondness breaks in upon me; and as I would not have my tears flow tomorrow, when your husband, and the father of our dear babes, is a public spectacle; do not think meanly of me that I give way to grief now in private, when I see my sand run so fast, and I within few hours am to leave you, helpless, and exposed to the merciless and insolent, that have wrongfully put me to a shameful death, and will object that shame to my poor children. I thank you for all your goodness to me, and will endeavour so to die, as to do nothing unworthy that virtue in which we have mutually supported each other, and for which I desire you not to repine that I am first to be rewarded. Since you ever preferred me to yourself in all other things, afford me with cheerfulness, the precedence in this.

"I desire your prayers in the article of death, for my own will then be offered for you and yours.

"J. Penruddock."

*Sir Henry Vane.* I shall not speak to the matter, but to the order of your proceeding. I cannot bear what is spoken. There is a law still in force, declaring it treason for any man to declare or proclaim any person to be King of England.* I desire that gentleman may explain.

*Serjeant Maynard.* He did not say he was King; but that he exercised the kingly power. If he do not, you must hang up all your judges in Westminster-hall.

*Sir Thomas Wroth.* He said, absolutely, the Protector was King of England.† If so, I pray you where is your Prince of Wales. If we find kings destructive to the nation, we may lay them aside. It is a formidable thing to speak of a King.

One maxim has undone the nation. The King can do no wrong, (he said no right).‡

When it was told the King, that Ireland would be lost if he looked not to it; he answered, I shall go last: but it proved not so.

You are now not come to declare who the persons shall be, but how you will bound them.

Spend not your precious time, whether upon old or young lords, but debate the bounds. That is my motion.

*Mr. Bacon.* It was well propounded to leave the business as we find it, and go to bound them. If I thought that House would not fall upon that, I should be as willing as any man, that the old faithful nobility might be restored, if it could consist with the safety of this nation, and the interest of those noble persons.

* See vol. ii. p. 38, *note**; *Scobell*, Jan. 30, 1648-9.

† See *supra*, p. 531.

‡ On "the King's going into Scotland" in 1641, Mrs. Hutchinson says, "It retarded all the affairs of the Government of England, which the King had put into such disorder, that it was not an easie taske to reforme what was amisse, and redresse the reall grievances of the people; but yet the Parliament showed such a wonderfull respect to the King, that they never mentioned him as he was, the sole author of all those miscarriages, but imputed them to evill councellors and ministers of state, which flattery I feare they have to answer for. I am sure they have thereby exposed themselves to much scandal." *Memoirs*, (1810, i. 141, 142.

If the Lords have a right, consider whether it is proper for us to judge their right, as members of that House. Can we do it, and will they accept it. I doubt they will not take it well from us. Should we be judges of it, I fear they will stumble at it. As the affairs stand now, I think their right is very much interrupted. If they come in by right of peerage, are they peers to his Highness? Do they hold of him? Are they peers to the rest of the House. Will they like that some of them have had writs, and have refused.* Things

* See vol. ii. p. 415, *note* *. The Earl of Warwick, (see *supra*, p. 356, *note* ‡,) according to Mr. Noble, "refused to sit with Pride and Hewson, one of whom had been a drayman, the other a cobler." The undoubted possession of armorial bearings by these Lords, risen by good fortune from "the working classes," seems to have perplexed that diligent investigator of heraldic lore.

"A seal of arms, bearing a chevron inter three animals' heads erased," is annexed, in the King's "death warrant," to the name "so strangely written that it is scarce legible," of Colonel Pride, "a foundling in a church-porch." Colonel Hewson, also "sprung from the dregs of the people, first a cobler, then a shoemaker," a natural and easy ascent, unquestionably "bore for his arms, (as appears by his seal) two horses counter salient, a sword erect in base, and four annulets." Mr. Noble therefore suggests the "Query, did they not receive arms from the heralds, or did they assume them without?" *House of Cromwell*, (1787,) i. 375, 417, 418, 421.

Sir Thomas Smith (see vol. ii. p. 456, *ad fin.*) has set such a question at rest, by showing how, at least in 1565, one of the *novi homines*, of any rank, could procure the herald's "slender help to fame;" now, by the progress of plebeian education, becoming every day more slender. If he would only, by an allowed and well-understood *palmistry*, conciliate "a king of heralds," that prime officer in the court of honour, "his visual nerve" being thus invigorated, would presently discover among "old registers," arms, if not supporters, belonging to the applicant's remote "ancestors."

If the Earl of Warwick really "refused to sit with Pride and Hewson," from a consideration of what they had been by the accident of lowly origin, whatever they had since become by the successful application of talent and opportunity, he was ill fitted to have served a Parliament which, had the people been sufficiently enlightened to choose a virtuous and unexpensive, instead of a profuse and profligate government, would have founded a republic. To become the favourite of a Protector, who vainly desired to be a king, and especially to have the

are unhappily come to this. I fear that they are not peers to the present powers, and will not own a right from this Protector. Do they hold their baronies by this title?

The new constitution is not the foundation of the rights and liberties of the people. We have our *Magna Charta* and Petition of Right now in being, by a better title. Yet our rights and liberties are but declared by them. They are by ancient usage and custom, though neither of them both had been.

There are two Houses in being you have declared, so what hinders but we may declare that those that are in the other House are the other House. It is to no end to debate of the old House. That debate will stop proceedings all the nation

honour of putting on him a "purple velvet robe lined with ermines," (see vol. ii. p. 311,) and of serving him as "post-master of the foreign letters" with "5000*l.* per annum," must have been more congenial to his Lordship's sense of aristocratic dignity. See "Dr. Harris," *supra*, p. 276 *note*.

Another Peer of England who refused to sit in the Other House, was the Earl of Manchester, (see *supra*, p. 516,) of whom Cromwell had said, before he became a creator of Lords, as reported by a contemporary, "that it would be never well, and we should never see good days, whilst there was one Lord left in England, and until the Earl of Manchester was plain Mr. Montague." *History of Europe*, (1706,) iv. 434.

Of "Lord Viscount Say and Sele," Mr. Noble says, "Cromwell invited him to partake of his honours; but he turned from that great man with disgust and abhorrence, as the betrayer of the common interest of the republic." He, however, soon found another "great man," towards whom "he turned." Mr. Noble says that, "to the disgrace of King Charles II., he raised him, though an open enemy to the constitution in Church and State, to be a privy-counsellor and lord privy-seal." This versatile politician seems not to have thought that preferment "might come a day too late." Yet, as "his Lordship died April 14, 1662, aged about 80," it was surely more than a "grand climacterical absurdity," after having been "excepted from pardon" by the father, as an inflexible republican, thus to crouch at the last, and to die a placeman and a courtier to the son. *House of Cromwell*, i. 377.

The Earl of Mulgrave can scarcely be said to have refused; dying August 28, 1658, a few days before the Protector, on his way to London.

Viscount Fauconberg, the Protector's son-in-law, and Lord Evers, appear to have taken their seats.

over, and will destroy all. Therefore, for peace and unity's sake, propound for the other House.

*Mr. Stephens.* I agree as to matter of unity.

*Magna Charta* was not merely the purchase of the sword. It was confirmed often by Parliament. I would not have it taken away by the sword.

Dan Vincent, a good author, tells you in his History, that the Barons made protestations to confirm and stand by *Magna Charta*. He cites the oath for obtaining it. The King was also sworn: but they, not content with that, another clause was added more binding, and he repeated this clause: *et si contra eam ibimus, tunc liceat omnibus in regno nostro insurgere, et vim,* &c. which gave great countenance to the late proceedings, in the war against the King.

For my part, I stand neither upon terms nor words. I did not hear that the word "King" was so formidable a word to the last Parliament;* and I do conceive that the Protector and Chief Magistrate may declare titles, and names of government.

It is declared to be law, and constantly practised, that he that is Chief Magistrate may declare his successor, and, by all laws, it shall go to his successor.

I would have you careful that that House grow not so great as to swallow up your own House.

The question is now, whether of restitution or constitution? The Parliament to consist of two Houses, may relate to either. For my part I am against altering constitutions. I know the old Lords had an ancient fundamental right, and the words of the perpetuating Act† are that they should not be dissolved but by their own consent, nor by that neither, without an Act of Parliament.

The Petition and Advice does not take away the former Act. It may be a good law till you declare otherwise, but to say that we come hither upon that foot, I see not, for there are words in the Petition and Advice, that Parliaments shall be called according to the old law.

* See *supra*, p. 519 *ad fin.* † See vol. ii. p. 140 *ad fin.*

Your Petition and Advice says there shall be another House. It gives to this other House, a negative power, but no affirmative power is given them, neither by that, nor by the explanatory clauses. It only saith what they shall not do; but doth not tell them what they shall do.

I would have the old foundation restored, and those that are capable restored, and what others now in the House are thought fit to be called thither. I move that the old Lords be called in.

*Mr. Chaloner.* Where the law is silent, no man ought to speak. Divers are for the old faithful Lords. They did you great service in *Magna Charta.* I understand not that so many of the old Lords are so deserving. As many were against it as for it, and few of the posterity now living,* or any of themselves twenty years after it.

If you tie us to the old foundation, then why not bring in archbishops, bishops, priors, and abbots. The clergy had a third part of the land, and were then a third estate. The Prior of St. John sat above all the Lords, because the clergy had the lands; but when Henry VIII. put down the clergy, the Commons then rose up, and grew great and rich. The bishops were then grown poor, and it was their baronies that supported them. I am not for one House to put out another. But if the Lords owned all the lands of the nation, as now the Commons almost do, I believe they would not suffer this House to sit here to give laws to them.

But that constitution, though it was very ancient, and then good, yet time hath defaced it, and it is now impossible to attain any good by it, because it differs so much from what it was.

In France, the clergy and nobility have most part of the lands, the Commons not a third part, unless it consist of monies and goods.

All governments fall into one another, as Aristotle says; nought so ordinary.

They talk of ancient constitutions. The constitution of

* See *supra*, p. 512 *note* †.

Paul's Church was very noble and ancient, but where is it now? If you go about to do any thing with it now, all the workmen in the world will tell you the foundation is rotten.*

* It appears that a large sum had been collected for repairing the Church, during several years before the war, when "the body of the Church" was "turned into quarters for horses; and part of the choir, with the rest of the building, eastward, was, in 1649, by a partition wall, converted into a conventicle." See "Life and Times of Cardinal Wolsey," (1744,) iii. 226, *note*. See also *supra*, pp. 118, 202, *notes*.

The following orders, from the commanders of the guard, printed as a hand-bill, refer to this occupation of Paul's Church:—

"May 27, 1651. Forasmuch as the inhabitants of Paul's Churchyard, are much disturbed by the souldiers and others, calling out to passengers and examining them, (though they goe peaceably and civilly along,) and by playing at nine-pinnes at unseasonable hours; these are therefore to command all souldiers and others whom it may concerne, that hereafter there shall bee no examining and calling out to persons that go peaceably on their way, unlesse they doe approach their guards, and likewise to forbeare playing at nine-pinnes, and other sports, from the houre of nine of the clocke in the evening, till six in the morning; that so persons that are weake and indisposed to rest, may not be disturbed. Given under our hands, the day and yeare above written.

"John Barkestead,
"Benjamin Blundell."

John Lilburne thus complains in 1649:—"I was fetched out of my bed in terror and affrightment, and to the subversion of the laws and liberties of England, and led through London streets, with hundreds of armed men, like an Algier captive, to their main-guard at Paul's, where a mighty guard stayed for the further conducting me by force of arms to Whitehall." *Trial*, p. 11.

This Church had been desecrated, in a very different manner, in the earlier part of the century, and probably long before. Bishop Earle, in 1628, thus somewhat quaintly describes it, as a place of daily and very general resort:—

"Paul's Walk is the land's epitome; or, you may call it, the lesser isle of Great Britain. It is more than this, the whole world's map, which you may here discern in its perfectest motion, justling and turning. It is a heap of stones and men, with a vast confusion of languages; and, were the steeple not sanctified, nothing liker Babel. The noise in it is like that of bees, a strange humming or buz, mixed of tongues and feet. It is a kind of still roar, or loud whisper. It is the

I would have no one sort of men to be hereditary judges of the nation, to them and their heirs for ever. I would have you make these to stand, and then debate whether you will add any to them.*

*Captain Baynes.* Make this your question, whether the House now in possession shall be that other House intended in the vote.

*Mr. Speaker* propounded a question to that purpose.

*Mr. Attorney-general.* I move that the question be, if they shall be hereditary.

*Colonel White.* Put it whether the persons now sitting in the Other House by the Petition and Advice, shall be that other House you intend.

*Mr. Onslow.* The method of bounding the fens, is not to lay out money on bounding that which has no need. So I would have us do. Consider, whether by another House, expressed in the vote, you intend that other House by some said to be in possession.

Frame your question to this purpose, and take it up tomorrow morning.

*Sir Thomas Wroth.* First resolve that they shall not be hereditary.

great exchange of all discourse, and no business whatsoever but is here stirring and a-foot. It is the synod of all pates politick, jointed and laid together in most serious posture, and they are not half so busy at the Parliament; and for vizards you need go no farther than faces.

"It is the market of young lecturers; whom you may cheapen here at all rates and sizes. It is the general mint of all famous lies, which are here, like the legends of popery, first coined and stamped in the Church. All inventions are emptied here, and not few pockets. The visitants are all men without exceptions, but the principal inhabitants and possessors are stale knights and captains out of service; men of long rapiers, which, after all, turn merchants here, and traffic for news. Some make it a preface to their dinner, and travel for a stomach; but thriftier men make it their ordinary, and board very cheap." *Microcosmography*, (1732,) pp. 131, 132.

* "Here several motions were made, to define the persons, and resolve upon what House we would have before we go to bounding them." *Goddard MSS.* p. 256.

*Mr. Godfrey.* I think it not a matter of that necessity as is urged, to debate the persons before the bounds. The best foundations are upon principles *ab abstracto.*

If you resolve upon the old peers, and go about to bound them, perhaps you intend that which you cannot do; and if you bound the other House now sitting, instead of bounding them you will perhaps add something to them.

There has been great debate whether to join the right hand to the left, or the left hand to the right. That is not the question; nor whether the new House shall be a House of Lords. You can never make a bird-bolt of a pig's tail.

It will not be prudent to do any thing exclusive of the ancient Peers. The Petition and Advice does not do it; no powers nor qualifications exclusive of the old nobility. Therefore avoid that question, seeing you find nought in that law to do it. I would have no vote pass here in the negative, which should exclude the nobility.

A clause indeed, in general terms, that in all other things they shall be called according to the laws, is rather an affirmance than an exclusion of the old peerage. Therefore call not that into question, which is not now in question. You may very prudentially consider of bounds; though it be somewhat difficult to suit all persons, and to bound those who claim by ancient right. Make this the first bounding of that new House:—

That none shall sit in the other House, but such as shall be approved by both Houses. This is not prejudicial to the old Peers. They have consented to such a Bill in the Long Parliament.* I know not why it may not as well be offered now, as before. This boundary looks every way, as to either House, and it will greatly secure you of the interest of those that sit there.

*Colonel Parsons.* I perceive, whether they be old Lords or new Lords, you intend to bound them; but I would have the first question to be, whether it be the other House that you mean by your vote, the persons now in possession.

* See vol. ii. p. 21 *ad fin.*

The reason why we have not all this while proceeded to the bounds before the persons, was because, until you knew what the other House should be, you could not tell what bounds to set them.

The other House you cannot bind, nor this, without their own consent.

I move, to consider whether the House now sitting, shall be the other House.

*Mr. Bodurda.* We are rather bounding the persons than the House. There is no positive power in the other House.

I move, that we go not upon negatives, as not so seasonable, but make this the subject of debate; whether it shall be part of the Bill to declare the other House of Parliament mentioned in your vote, to have a co-ordination with this House in the legislature, or how far they shall have this power: else time is but spent to consider what persons or what powers.

*Mr. Hobart.* I think you have the greatest business before you, that you will have, sitting this Parliament.

We all agree a boundary should be between this House and the Chief Magistrate.

Those gentlemen that are for a popular government, do say that the monarchy of England was the best settled government, the best limited monarchy in the world; and the House of Peers the best boundary between the supreme magistrate and the people. And if such a boundary could be now found, it would be best to submit to it. If, according to property, you could make a fit balance, they would not be against it; but they say, such a bound you cannot have. They would have a propounding, and a deliberative power, in making laws.

It is the best way to go on with your negative, and then conclude with your affirmative.

Our first care must be, how to find such another House as the old House of Peers was, which may be a sufficient bulwark for us. If it happen that they may be made a fit and proper boundary, then let them stand. But if that cannot be, then you must have a special care; and it will be most

proper to think of boundaries, that we may not trust them with too great powers. If it prove not like the walls between Tartary and China, I would have it well considered.

If you cannot make them such a bulwark as the ancient Peers, then take heed how you put the staff in their hands; that if it cannot beat us, it run not into our hands and hurt us.

I would have none there that have any office, nor let them have a negative in any thing, unless that the government shall not be altered, nor imposition upon consciences; and what other things gentlemen shall please to add.

It was moved, that this constitution might otherwise be the greatest tyranny that could be invented. A single person with an army. A negative voice, 130,000*l.* per annum, and a Council of officers,* a balance upon you. This should be well considered.

For this Petition and Advice, if Pope Alexander, C. Cæsar Borgia, and Machiavel, should all consent together, they could not lay a foundation for a more absolute tyranny.†

First debate the persons, and then the powers. I move to bound the negatives, before you assert the persons.

*Mr. St. Nicholas.* The debate hath been all about which should be the other House. Your stream hath all run that way.

I move that the question be, whether the bounds you are now about, and the House in our vote, shall be applied to the House now sitting in possession.

* See *supra*, p. 168 *ad fin.*

† Mr. Bethel describes "the country-party" as "showing that if Pope Alexander the Sixth, Cæsar Borgias, or their cabal, had all laid their heads together, they could not have framed a thing more dangerous and destructive to the liberty of the people than is the Petition and Advice, in several particulars; as in settling so great a revenue upon the Pretender. That in giving the purse of the people to the Chief Magistrate, they give away all the security they have for their rights and liberties; because, having the purse he hath power to raise what forces he pleases, and having that, all bounding him signifies no more than bounding a lion with paper chains." *Brief Narrative*, p. 338.

*Mr. Turner.* I move not to put the question first, for if we shall put that question, and it go in the negative, I fear we shall not have power to vote again. I know not what will become of us.

I would have the first question to be, if the old Peerage shall be the other House, and then you may add these persons that are now in possession.

*Sir A. Haslerigge.* To the orders of the House.

Here is no use nor place for such arguments. We expect law from the Long Robe, and not fear of the long sword.

We came up free, and I hope we shall go down free. Let us fear nothing here, but God and the neglect of our duty. If, at last, we be sent down as wise as we came up, there is no great harm in it.

*Mr. Turner.* Though I have never worn a long sword, as that gentleman, yet the Long Robe has as little fear as others. I did not express any fear, but I said if this vote passed in the negative, we should not know what to vote next.

*Sir Arthur Haslerigge* was satisfied with the explanation.

*Mr. Bulkeley.* That there is a law is most clear, how taken away I know not. I would be glad the question may not be exclusive of the one, nor positively inclusive of the other, yet I would not have them all brought into a sieve.

The way to give every man his vote, is to put that they shall be approved by this House; and then, if any person dislike the choice, they may give their objection. This will tend most to settlement to declare that the members to sit hereafter in the other House shall be approved of by both Houses.

*Mr. Jenkinson.* This is admitting them to be a House in being. I would have it run, that this House shall approve of them. For how can that House approve that is not in being.

*Mr. Goodrick.* I move that the question be for both Houses to approve, and that the word "hereafter" be added.

*Mr. Steward.* I move that the question be, that first, this House approve, and when another House is in being, then let them concur.

*Mr. Knightley.* I move that those that are in, be in; and that for the future we have this drawbridge. Else, as I said before, we destroy the constitution on which we ourselves sit.

*Serjeant Maynard.* We are not fully ripe yet for a question. We must determine something, else we shall always be debating, and never come to resolutions; or if to resolutions, never to practice. We must come to it first or last, to resolve whether the members now sitting shall be that other House we have voted. Of necessity and prudence we must come to that which, in our consciences, we think shall be the question. The appointing of what persons, is one of your greatest bounds; and then the number and qualifications, whether hereditary or no.

Make this the question, whether the persons called to sit in the other House, shall be members of that other House which you are now bounding.

*Sir Henry Vane.* You will only propound it, but not put it.

*Mr. Trevor.* I understand not very well that motion from the learned gentleman. I conceive another question more proper. It looks too exclusive of the right that is so much urged. I would rather have it by a concurrence with the other House, than by a vote here.

If you mean, the approbation of the present persons; that is as much as to say they are not in being; but I suppose you mean only those that shall hereafter be named, that they may be approved on by both Houses.

*Colonel Bennet* seconded Serjeant Maynard's motion.

*Colonel Fielder* seconded the other motion, that for the future they might be approved.

*Sir Henry Vane.* That last motion is not ingenuous; for it is a granting by the lump all that are in possession to be approved on already by this House, and only gives us power to consider of members hereafter to be added.

The question upon the persons, is most proper and ingenuous; and if that pass, you will think fit to send messengers to them for a concurrence. Let that be your question, and then it is most plain and ingenuous for every man to give his

vote, and do what in your wisdom you shall think fit. It is not clear that there is any law in being for their sitting.

*Sir Arthur Haslerigge.* I second the question that the learned Serjeant moved, whether the House now in possession shall be that other House? Let us go plainly and clearly to it.

*Mr. Hewley.* Sir Arthur Haslerigge is mistaken in the Serjeant's motion, for he moved that the question might be, if the persons now called to sit in the other House shall be members of that House.

*Mr. Neville.* That question will be more doubtful than the other. Put it clearly upon which of the Houses you will have. I can then give my vote; otherwise I cannot. I would not have us involved in a question. I must steal out, if your question be so perplexed.

*Sir Walter Earle.* That gentleman may withdraw if he cannot clearly give his vote to this question. I know very few of those persons of the other House. There is one that is gone. I should have been sorry to have given my vote that he should have been a member of that House that had so highly broken the privilege of Parliament.*

* "Query, if it was not Pride?" MS.

He had soon followed the Protector, and very narrowly escaped the same violation of his grave; for it is not in the reign of Charles II. that "British vengeance wars not with the dead." (See vol. ii. pp. 145, 443, *notes*.) Mr. Noble describes Colonel Pride as "dying just before the Restoration, October 23, 1658, at Nonsuch: he was buried with baronial honours. But after that joyous event, his body was ordered to be dragged from its grave, and hung upon the gallows at Tyburn with his old master Cromwell's, Ireton's, and Bradshaw's." This cowardly outrage, on the ashes of the learned and the brave, a worthy celebration of that "joyous event," was averted from the grave of Colonel Pride, "no doubt," by "the interest of the Duke of Albemarle, he having married the natural daughter of Thomas Monk, Esq. his grace's brother." *English Regicides*, (1798,) ii. 132.

Bishop Burnet has inflicted an historic justice on the royal violator of the dead, by very minutely relating, when describing the close of his inglorious reign, how "the king's body was indecently neglected." The disgust excited by some of the expressions, may be excused, as applied to one who, in the judgment of this near observer, though "he had an

Mr. ——— moved for the old Peers.

*Colonel Birch.* I take our great end to be God's glory, and our own and the nation's peace and safety. I should not trouble you, if I thought at this time it would answer these ends, to call in the old Peers. I am of their minds that would neither meddle one way nor another, but leave it to time.

I think your other question is as dangerous, if it pass in the negative.

The proper question is, that for the future all should be approved by both Houses. Then are my fears removed; for the single person cannot impose.

It is best for the interest of this nation to take the other House as we find it. When I go into the country again, and tell them this was the cause why I came down so soon,* they will hardly be satisfied.

If I can read the Petition and Advice, they are in being, Declare that hereafter none shall be admitted but by approbation of both Houses, and that will satisfy me.

appearance of gentleness in his outward deportment, seemed to have no bowels nor tenderness in his nature." *Own Times*, (1724,) i. 610.

"An anonymous author of that time, describing the "40 that accepted the promotion out of 62 lords that were appointed," says:—

"Colonel Pride, then Sir Thomas, and now Lord Pride, was, sometime, an honest brewer in London. He went out a captain, upon account of the cause, fought on, and in time became a Colonel. He did good service in England and Scotland, for which he was well rewarded by the Parliament. He gave the Long Parliament a purge, fought against the King and his negative voice, and was against the negative voice of the Lords Spiritual and Temporal; being unwilling there should be any of them in the land.

"But, since that, he changed his mind and principles with the times, and would fight for a negative voice in the Protector, and also have one himself, and also be a lord, since he was a knight of the new order already, and grown very bulkish and considerable. It is hard to say how the people would like it, though it is likely the noble lawyers would be now glad of his company, since there was now no fear of his hanging up their gowns by the Scotish colours in Westminster-hall, as he formerly so much boasted and threatened to do." *History of Europe*, p. 434.

* He probably means, because the Commons had provoked a dissolution by disallowing the other House.

*Lieutenant-general Ludlow.* The gentleman contradicts himself. He says it is not time to dispute right.

Declare what in your judgment is right. I would not have you go to persons. It is most proper to put the question whether the old Peers or new shall be this other House; that will answer all objections, and if you please, let that be the matter of your debate to-morrow morning.

Resolved: that this debate be adjourned till to-morrow morning at eight of the clock.

And the House adjourned at one o'clock accordingly.

Resolved that Mr. Hunt, one of the members of this House, have leave to go into the country for ten days.

The grand Committee for Religion sate,

*Mr. Bacon* in the chair.

They proceeded a great way in debate upon the greater Catechism of the Assembly of Divines.*

The Committee for preparing a Bill for ejecting scandalous ministers, &c.,† sat in the Inner Court of Wards,

*Mr. Hewley* in the Chair.

They proceeded to debate the Bill, a good way, and adjourned till Wednesday at 3 o'clock.

The Grand Committee sat till candles were called for.‡

* See *supra*, p. 332, vol. ii. pp. 333, 334, *notes*. On the "Shorter Catechism," See vol. i. p. 376, *note*.

† See *supra*, p. 152.

‡ The following article of intelligence, probably refers to what "Mr. Noel" says, *supra*, p. 386, on "going into Bantam." "Mr. Downing," was the "Sir George Downing," of Charles II. (see *supra*, p. 179.) "M. De Witt" was the celebrated Pensionary, assassinated in 1672, by some zealots of the House of Orange. He had opposed, in 1650, the war with the English Commonwealth. Bishop Burnet has given some interesting particulars of De Witt. *Own Time*, (1724,) i. 220, 326.

"The last from the Hague, Feb. 28. S. N. The adjusting of matters concerning the three ships, taken in the road of Bantam, being brought to a point on Saturday last, our English resident, Mr. Downing, treated the Directors of the East India Company, together with the London merchants; upon Monday, Monsieur De Witt treated them again; on Wednesday, the London merchants did the like; and yesterday the said resident signed the adjustment of the sum, with the deputies of the States General." *Mercurius Politicus*, No. 556, pp. 269, 270.

*Tuesday, March* 1, 1658.

The House being acquainted that Mr. Serjeant Birkhead was fallen sick, and that by reason of his indisposition he could not for the present give his attendance on the House, and that Mr. Serjeant Middleton, who had formerly upon a like occasion supplied the place, if the House should so think fit was ready to give his attendance instead of Mr. Serjeant Birkhead, until his health should be recovered,—

Resolved, that Mr. Serjeant Middleton do supply the place of Serjeant-at-arms during the sickness and indisposition of Mr. Serjeant Birkhead, and that Mr. Serjeant Middleton be called in to give his attendance on the House accordingly; and he was called in by the clerk assistant, and gave his attendance in the same place.

Resolved, that such of the members of this House as are returned to serve for several places, for none of which places their elections have been as yet questioned, do make their elections respectively for what place they will choose to serve, by this day se'nnight; and if they shall not make their election by that day, that then the House do appoint for what place such members shall serve.

Resolved, that the sheriff of the county of Southampton, do deliver in the indenture remaining in his hands, concerning the election for Yarmouth, in the Isle of Wight, (wherein Mr. Sadler is concerned,) to be filed of Record there, to the clerk of the commonwealth in Chancery.

Dr. Stave being chosen for several sheriffdoms in Scotland, made his election for Thetford, in Norfolk, and waved his election for those sheriffdoms.

I came after prayers.

*Serjeant Waller* offered to report Mr. Streete's business from the Committee of Privileges,* being by order of Committee, upon motion of Colonel Blake, appointed this day to be reported.

* See *supra*, p. 435.

But the House, supposing it would involve them in a debate, appointed it to be brought in on Friday morning; but no order was entered upon it. There was only taken the sense of the House.

It was moved, that to settle the constitution was of greater consequence than the business of any one member.

The order of the day was read, which was adjourned yesterday, touching the bounds and powers of another House.

*Mr. Mussenden.* I have learned at the University that the *quid* goes before the *quale*. It will be hard for you to make a suit that will fit anybody. I would have the persons first debated. I therefore move that you declare what House you will have, before you consult what bounds you will give. You proceeded so with the single person. You voted not only a single person, but the single person, before you went to bound him.

*Mr. Pedley.* If you make not a settlement now, I fear the consequence, that good men in the nation will think you cannot settle them; they must look for it by forced means, from beyond the seas.*

* With Vane, Ludlow, Scot, and the yet unperverted Fairfax, (for I cannot allow myself to degrade his weakness into hypocrisy,) were, no doubt, now acting, as they had cast their different parts, several commissioned "from beyond the seas," to the former Parliaments under the Protectorate, who, like the "spies sent forth" by "the Chief Priests and the Scribes," in Jewish history, "should feign themselves just men," and for whom it would not be difficult, at the *borough market*, to purchase seats; while the oath against monarchy, would be as readily uttered as that by their royal master (*supra*, p. 373) for the Presbyterian covenants. This purchase of seats, would, indeed, be more easy, now Richard had revived the system of nominal, or as more plausibly expressed by anti-reformers, virtual representation, invariably practised under the royalty. (See *supra*, pp. 74, 323.)

"In these debates," says Bishop Burnet, (referring to the discussions in Parliament, on Cromwell's project of kingship,) "some of the Cavalier party, or rather their children, came to bear some share. They were then all zealous Commonwealth-men, according to the directions sent them from those about the king. Their business was to oppose Cromwell, on all his demands, and so to weaken him at home and expose him abroad. When some of the other party took notice of this great

There is another House, a House of Lords, which, it seems, is a litigated title.

change, from being the abettors of prerogative, to become the patrons of liberty, they pretended their education in the court, and their obligation to it had engaged them that way; but now, since that was out of doors, they had the common principles of human nature and the love of liberty in them. By this means, as the old republicans assisted and protected them, so at the same time they strengthened the faction against Cromwell. But these very men at the Restoration, shook off this disguise, and reverted to their old principles for a high prerogative and absolute power." *Own Times*, (1724,) i. 70, 71.

Dr. Bates, describing those members of the Parliament in 1654, who qualified by signing the recognition, speaks of some among them manœuvring between the *Democrats* and the *Cromwellians*, for the destruction of both; "utrique parti se conjungentibus, qui clàm Regi bene volebant, simultates insufflantibus, et quantum fieri potuit, partes inter quas hæc seriò agerentur, acrius committentibus." *Elenchus*, (1676,) p 290, (some who secretly adhered to the King, joining each party, inflaming animosities, and exasperating against each other in these disputes, those who were engaged on principle.)

Again, in 1656, Dr. Bates, having first described the arguments for the proposed kingship, thus introduces a Stuartine faction in that Parliament; whose "directions from beyond the seas," must have differed from those described by the Bishop.

"Regii, manibus pedibusque, contendunt ut iretur in priorem sententiam; utpote quam haud exigui momenti credebant ad causam suam à mortuis resuscitandum, dum continua *Democraticos* inter et *Cromwellium* contentionis poma spargerentur," *Ibid.* p. 313. (The Royalists strove tooth and nail, for his compliance with the first advice, as eminently conducive to the revival of their cause, while thus the apples of discord would be continually thrown between the Democrats and Cromwell.)

Dr. Bates, on the Republicans in Richard's Parliament, says:—"Hisce adjunxêre se non pauci qui *Regi* stadebant, ut in æquilibrio detentis contrariis partibus, nihil utrinque certi statueretur." *Ibid.* p. 336. (To these, many adherents of the King joined themselves, that thus, both parties being equally balanced, nothing might be decided.)

Lord Clarendon, on Cromwell's royal project, in 1656, describes, among those members who "would presently vote him king, some men who had always had the reputation of great fidelity to the King, and to wish his Restoration;" for which they seemed "really to believe that the making Cromwell king for the present, was the best expedient;" while "the more sober persons of the King's party," also members, I

There are three claims :—

1. Those honourable persons in possession. They claim by the Petition and Advice.

2. The ancient peerage. They claim by prescriptions from their ancestors to them and their heirs, and that they are only deforced. They did enjoy it, until they were expelled by those on the post. There are others who say they have forfeited, and that the right is in this House. They would put it wholly into your hands.

My desire is, that the title may be postponed, and that you would hold the scales indifferent, until the title of the two other Houses be tried between them, for the ancient right of the peerage. It is certain they are very ancient, but they have no title by prescription; therefore it may be interrupted.

The old Lords' title was so strongly argued yesterday, that if it had gone, he* had set you beside your chair. He said there, more ancient mention made of King and Lords, than of the Commons. The return of the Commons is as ancient as any return or records. A council was called on all occasions.

I must confess there is very ancient mention of the legislative power in the people, as well as the great men, and nobles, and King.

Henry III. A remonstrance mentions the Commonalty to join in the laws.

2 Richard II., mentions that the Commons shall be called as by the ancient laws.

I cannot comply with his prescription; he must prescribe either in the thing or in the person. In the person he cannot, because their prescription is broken.

The Barons were not created Lords; but by reason of their tenures, they were called by writ.

suppose, of that Parliament, "who made less noise, trembled at this overture, and believed that it was the only way utterly to destroy the King, and to pull up all future hopes of the royal family by the roots." *History*, (1712,) iii. 589.

* "Colonel Terrill," *supra*, p. 513—525.

Many Barons cannot claim that they hold by one knight's fee of the King.

Then they must claim by their persons. Can any lineally claim, since Henry III.?—They cannot.

That a Parliament consists of two Houses, is a constitution which I think is so fundamental that it cannot be taken away.

The Constitution still remains, though the persons be removed.

It is no new doctrine that the rights of particular persons may suffer for the public interest. Nobody will deny but in a public combustion, a common calamity, it is lawful to pull down fences or houses to prevent the spreading of fire; so, in a natural body, to cut off a hand or any member that is gangrened.

I suppose there was cause for taking these away; I shall not examine the merits of it; sin was the cause, whether public or of persons. It concerns us now to go on.

We find the Lords now taken away, by an Act of Parliament *de facto*. I shall speak to the *de jure* by and by. Then came the other House, and they say that what was taken from the old Lords' House was granted to them, as, by the Petition and Advice. You say you have not granted to them. They say, they are called. If you have granted it, it will not be proper for you to question it. You have granted it; and unless you will run yourself upon a rock, you will acknowledge they have some right, and not boggle at them at a distance. Perhaps if you will look upon them nearer, you would not take them for such bugbears and scarecrows as that you should so stand off. Not all the things done that Parliament, were without exceptions. It is true the Parliament was not so happy as to be free, but if you make a nullity of all done under a force, whither goes the tendency of that? where will you end? You may find, and, look back into all ages, you will find laws made under force. Who knows but the Great Charter was obtained by as great force*

* See "Raleigh," *supra*, p. 515 *note**.

as any law. If Charles Stuart had a Parliament of his friends what could he do better for his service then to void all done since 42? Do not you by this take up their principles and make their ends?

A question hath been preferred, whether those persons now called to sit in the other House be not the House intended by your vote. If you should lay aside this House by a question, see where you are. I could tell whether to give my yea or no, but I think it is a very dangerous rock if it pass in the negative. They are gone. Another rock is the right of the old lords. Then if you vote in the other Lords; if they will not come in, then you will of necessity come to a democracy and confusion.

Had you made your prescription for the Spiritual Lords, you might have made it far clearer. The Bishops and successors had a more ancient right by far, and can prescribe by better title. Yet for the Spiritual Lords there is not one word spoken; so that if you will drive on the argument upon the account of persons and estates, that those are so essential, the argument will go a great way.

Consider where you are. You are come from confusion. You are not guilty of taking them away, but you find others in possession, in peace, by your establishment.

I am not against calling in so many of the old Lords as are capable, but I am not for their being hereditary. I would have you, therefore, in the first place, to confirm your rule, and take those that are in possession, and let your vote be, that none shall sit hereafter without the approbation of both Houses, and I doubt not but you and those persons may agree of qualifications and bounds. It is better when your laws are kept under two locks. If you had no new laws for twenty years, it would be no damage to the nation.

My motion is, that this may be the matter of your debate: that those persons that shall hereafter be called to sit as members of the other House, shall be nominated by both Houses.

He meant, "approved," and so was corrected by the chair.

*Colonel Gibbons.* I shall begin with a fundamental, that which is an undeniable verity: it is righteousness exalteth

a nation; sin is a reproach to a people. If we desire the honour and safety of this nation, we ought to promote and establish the one, and suppress the other.

Government is either ecclesiastical or civil; that of the keys to the Church and the sword to the Chief Magistrate. When Peter meddled with the sword, it was bid him put it up:* so when Uzzah meddled with the keys. He pertained not to the ark.† If we had all kept in our spheres, this confusion had not been.‡

The several sorts of government, are monarchy, democracy, &c. *Corruptio optimi pessima.* The three corruptions of government, as tyranny, oligarchy, anarchy, are not properly called government, but wens and exulcerations of them. As Augustus had three daughters,§ which made him wish, *utinam vixissem cælebs, aut periissem ortus;* and so he called them his *tres cancri et tres abscessi.*‖ So say I of these three corruptions of government.

Our ancestors gave place to monarchy, as so should I, if we were fit for it. The ancient feudal government¶ did best

* *John* xviii. 10, 11. † 2 *Sam.* vi. 7.

‡ Here is probably a censure, both of the Episcopalian and the Presbyterian priesthood, for their notorious assumption of civil power in their ecclesiastical characters.

§ A son and two daughters.

‖ "The two Julias and Agrippa Posthumus," says *Crevier*, "embittered all the happiness of Augustus. He used to call them his three *cankers*, his three *abscesses*. He never heard them named but he sighed; and often applied to them a line of Homer, (*Iliad*, iii. 40,) the sense of which is:—'Would to Heaven I had never married, but had died without posterity!'" *Rom. Emp.* (1755,) i. 268, 269.

Augustus applied the exclamation of Hector to Paris, flying from Menelaus, which Pope thus renders—

"Oh, hadst thou died when first thou saw'st the light,
Or died at least, before thy nuptial rite!"

¶ *Montesquieu*, who has devoted his 30th Book to this subject, asks; *C'est un beau spectacle que celuy des lois feodales?* "It was a system," says Mr. Dalrymple, "during the progress of which men arrived from the most rude to the most polished state of society: which has been the cause of the greatest revolutions, both civil and military, and connected equally with the manners and with the governments of modern

suit with this nation, and it flourished many centuries; but such were our national and personal sins, that they brought a change and confusion among us.*

The change of government in this nation, was by the instrumentality of men. What their ends were, I can neither speak nor justify. We have seen the Lord's judgment denounced, "I will overturn," &c. put in execution. King, Lords, and Commons, have been all overturned. When God has a controversy with a nation, it is not the skill of man can prevent it.

*Dies, hora, momentum*, &c. as Casaubon says in Sir Walter Raleigh. When the Lord pleaseth, a day, an hour, a moment sufficeth to overturn governments which have had lasting and adamantine foundations. We are met together by the good hand of Providence. It is my desire that we should settle it in righteousness and judgment, &c.

Government is radically and fundamentally in the people,

Europe." See "An Essay towards a General History of Feudal Property in Great Britain," (1759,) pp. ix. 10.

* This speaker, unless misreported, appears to have strangely regarded, as a divine judgment, the decline of a system under which the arts of peace were especially degraded; (see *supra*, p. 363, *note*,) and those who would "turn their swords into ploughshares, and their spears into pruning-hooks," were scarcely allowed a legal protection.

"The husbandmen," says Mr. Dalrymple, "were despised in the commonwealth. In every different nation they had a different name of baseness. They were subjected to the meanest services. They bore no part in the councils of the nation. In the law, even the price of their lives was estimated very low." At length, "the times grew more peaceable;" and, as a happy consequence, "peaceable manners made the minds of men be shocked with the bondage of their fellow-creatures." *Feudal Property*, pp. 25, 26.

How much is it to be desired, that the supporters of the *man-trade*, professed Christians, and zealous for their own liberty, should feel this salutary mental shock. They would then no longer buy and sell and goad on to exertion, their helpless brethren of the negro race, as if only a superior denomination of labouring brutes. "Il est impossible," says *Montesquieu*, "que nous supposions que ces gens-là soient des hommes; parce que si nous les supposions des hommes, on commenceroit à croire que nous ne sommes pas nous-mêmes Chrêtiens." *De l'Esprit des Loix*, (1750,) i. 343.

which is the form and frame of our present Government, to come to the point. I doubt I am tedious. I have given you experience that I can be.

Government must have for its adequate object, *futurum possibile*. The Commonwealth government did not stand.* I wish it might have continued a little longer, that we might have received the benefit as well as the burden of it.†

But we are now returning to the old foundation form. It was told you, the Protector is, to all intents and purposes, King. It may be told you, that this other House is a House of Lords, to all intents and purposes: and ere long, we shall be under the same oppressions, to all intents and purposes, as ever we were before. We must, therefore, be very circumspect in the materials of the other House. Let us, therefore, look to the integrals in this building.

It was told us, that building with old timber, if it be sound, is best.‡ I am of his mind. I confess I am not against building with old timber, so as it be sound; for in our country, we do not love to build with green timber, as being subject to warp, especially if it be placed near the sun.

I am a plain fellow: have got little but the gout by the service. But to the point. That I heard concerning two swords,§ was well applied. It moved me very much. It is something absurd to walk with two swords. One is useful. I have seen a sword and dagger worn together; but two swords! *spectatum admissi risum teneatis?*||

They are our children, it is said: the army I mean. It is fit, then, they should receive laws from us, and not lord it over us. Men of great place in the army are not fit to give laws in Parliament. I would have them men of honour and estates and interests.

My motion is, that such as are, or shall be summoned to serve and sit in the Other House, shall be such as shall be named and approved on by this House.

* See *supra*, p. 354.

† See *supra*, p. 63, *note*.

‡ See "Mr. Goodrick," *supra*, p. 352.

§ See *supra*, p. 328.

|| *Hor. Ars Poet.* l. 5.

*Mr. Morice.* It is most proper to agree the persons before the bounds. First propound what Peers shall sit, before you determine with what powers they shall be invested. It is most consonant to reason. When you speak concerning the bounding of the House, I presume you mean it metonymically, for the persons sitting in the other House. The persons, therefore, must first be defined. No accidents but inherent in a subject. According to the definition of the persons, prudence will direct you to limit their bounds. But, Sir, I conceive you have not yet laid your foundation low enough to build this House. You have not yet digged into the rock.

I think it requisite that you should, in the first place, assert your own power to do it; for if you have no power to bound them, why should you meddle with it. We do but build a castle in the air, and spend time superfluous, to debate a cause that lies before us as *coram non judice.* If you be painting out a government, do it as Zeuxis did, who painted for eternity; which you can never do, unless your ground-colours be well laid.

Therefore, 1. declare whether this House, the people's representative, have power to bound that other House;

2. Then declare the persons; not particularly I mean, but as to the constitution.

3. Qualify the persons, and then proceed to bound them.

His was a finely-timed speech, with rhetoric and story adorned, but I could not well hear him. If he spoke but for candles, the Poet must come in.

*Mr. Hewley.* I am one of those that would have gone upon the powers before the persons.

We cannot dispute the powers that flow from the entity, without disputing the entities; the accessories before the principal; yet in this case, we might have considered the powers.

But in regard the debate leads to examine the persons. Let us examine the rights.

The old Lords first, as to their rights as Barons, then as to their judicial powers. They have claimed an hereditary right. We must examine the reason.

I think *ab initio non fuit sic.* A judicial office cannot in reason be granted to a man and his heirs. It requires skill and science. A man cannot be steward of a Court-Baron, to him and his heirs. If this be so, how can such a power be inherent that is the highest judicature? *Nemo nascitur artifex.* Virtue is not derivative. *Anima non fit ex traduce.** Further it is not safe. *Salus populi suprema lex.*

Whether it will be safe to admit the sons of Cavaliers? They have sucked in these principles with their milk. I am rather led by that which is in being.

I doubt this string is stretched too high, as to the right of the old Lords. It is a clear mistake, that the Lords' blood purchased the Great Charter. The Commons were in.

The other House is part of our sinews. We can do nothing without them. Let us take notice of those that are in the other House. All proceedings are stopped.

Let that be your question, whether the members now sitting shall be members of the other House? I am not against calling in so many of the old Lords as are capable; but would not have the sons as yet. In time it may be more expedient. All that is lawful, is not expedient.

*Colonel Briscoe.* I conceive there is danger on both hands; both as to old and new Lords. *Suum cuique tribuere* is just, but whether now convenient is the question.

I am not satisfied that it is prudent at present, to admit the ancient right. They will not only claim as coequal, but I doubt above you. The consequence may be dangerous.

For the other House now erected, make that the first matter of your debate. If it pass in the affirmative, it must be according to the Petition and Advice. Whether you can put bounds to them afterwards I doubt. It is most pruden-

* Dr. "William Ramesey" published, in 1661, a small volume, now before me, in which he learnedly maintained "the soul's traduction." It is entitled: "Man's Dignity and Perfection vindicated; being some serious Thoughts on that commonly received Errour touching the *Infusion of the Soule of Man*; wherein it is rationally, philosophically, and theologically demonstrated, that the Soul of Man is *ex traduce*, and begotten by the Parents."

tial in my opinion, to begin with the powers.—I know the *quid* before the *quale* is most rational. You have done that already; you have resolved there shall be another House. What the persons be, it is not so material. If they be fit persons, they will fit the powers.

1. It is your own order to proceed upon the bounds. We ought to be confined to that *communis error facit jus*, says the civil law. We only differ *de modo procedendi*. Here has been a great deal of time spent, I doubt I may say misspent.

2. If you make bounds, it may fit any persons; the law looks to no affection to persons. Apply yourselves to the powers; and you may come to some result. The other way, I doubt, we shall never come to it. I would have it your question, that the members hereafter to sit in the other House shall be approved by this House.

*Mr. Speaker.* It has been often said that the persons is the special part of your bounds. The denomination of the persons is within your order, as being part of the bounds.

*Colonel White.* If you go to the denomination of persons, it will not do your work, or at least not do it well. It may be the persons that now are, may not be so fit to make up a good constitution in regard of their offices and places.

There are no constitutive words, of powers of the other House, in the Petition and Advice. They must either have power given them by that, or they have none.

That question is too comprehensive to pass all those persons in the other House by the lump. First clear the foundation, and let your question be, whether by the other House, in your vote, shall be intended the other House mentioned in the Petition and Advice.

*Mr. Sadler.* I had no mind to trouble you, but that I perceive this silence; yet I am glad to perceive, on the other hand, that the debate is carried on so soberly.

*Mr. Juxon* took him down, and said no man ought to sit that was not duly returned.

*Mr. Sadler.* I am returned. I saw it. It was affixed to the writ by the Committee of Privileges.

This return was brought to the clerk of the crown. Some

of his clerks demanded some monies for receipt of it. The party that carried it would pay none. Then the clerk began to examine if the writ was there, and, therefore, he could not receive the indenture without the writ. The sheriff demanded money. A gentleman standing by, that better knew the course of the times than I, gave him the money, and it was but half. It is more than I shall get by it. Another gentleman was returned in the writ, and because his money was wanting he would not return. I kept seven days out, before I came in. The other gentleman was chosen for another place. The Committee of Privileges ordered that they should annex the writ to the indenture, and then I thought the business had been done.

*Mr. Speaker.* This business was moved this morning.* He needed not make this long narrative.

*Serjeant Maynard.* This gentleman, upon his own showing, is not a member of the House, but only a member by his own averment. There is no return of the Sheriff.

This House is a Court of Record, and your judgment must be led by that. There was a case of one Mr. Poole, in the Long Parliament, chosen in the same manner, and till it was returned by the Sheriff he was thrown out, though a very worthy member.

It is clear he ought not to sit, (and he was called to withdraw,) for though you have made an order that the Clerk of the Crown shall receive the writ, yet till it be duly returned he cannot sit.

*Mr. Reynolds.* I move that one and all go out, the Scotch and Irish members.† I would not have us so strict in this case.

*Mr. Sadler.* The worthy Serjeant that knows law better than I do, does not know the law in this; for some boroughs may return without the Sheriff. The law differs and may differ.

*Serjeant Maynard.* I wonder this point should be put

* See *supra*, p. 549.

† See *supra*, pp. 29, 71, 75, 269, 287, 288, 354, *notes*.

upon us as law, that any borough can return without the Sheriff. I know the law to be contrary as well as I know any point of Littleton, and I were a mad man if I should knowingly offer aught in this House for law, that is not so.

*Mr. Solicitor-general.* Mr. Sadler is clearly mistaken in that point of law.

*Sir Henry Vane.* I move not to put a question upon this gentleman's withdrawing, but leave it to his discretion to withdraw if he think fit.

He did withdraw.

*Colonel Allured.* Another person sat upon the same score for Swansea in Wales. I move that it be considered. (But it was waved.)

I move that the Clerk of the Crown come to the bar to-morrow morning to mend the return, that we may not want the gentleman's company. It was ordered accordingly, that the Clerk of the Crown do attend with the return of the Borough of Yarmouth, in the Isle of Wight,* and mend the same at the bar to-morrow morning.

*Sir Heury Vane* moved also to consider the return for new Boroughs, but nought was done in it.

The order of the day proceeded on.

*Colonel Terrill* seconded the motion of Colonel White, that the question might be whether that other House intended in the vote shall be the other House meant in the Petition and Advice.

*Mr. Edgar* moved that those that are called to sit in the other House, be members of that other House during this Parliament, but was laughed down.

*Colonel Parsons* moved to the same purpose that Colonel Terril moved.

*Mr. Stephens.* I find it as hard to bound our debate, as to bound another House. Those that sit in the other House by the Petition and Advice, I cannot say that they sit upon the foot of right, as called by the successor of the late Protector. Whether they were called to Parliament according

* See *supra*, p. 549.

to the explanation,* and whether this calling makes them for their lives only, I very much question.

If it do not express it so in the writ, I question they are only *hac vice*. Besides the word successor being wanting, I make a little scruple because it says your Highness. It differs from a grant to the Chief Magistrate, the King, or Protector.

Our call hither may be by the Common law, and not upon the Petition and Advice.

When you sent propositions to the King, the other House agreed with you in it; they concurred with you, and you with them.†

I think it not amiss to have this previous vote, that those that shall sit in the other House, shall be approved by both Houses, and if you please you may *pro hac vice, de bene esse* allow the other House, by applying yourself to them by a vote.

*Mr. Swinfen.* There is most reason not to delay this business above all; for all your proceedings are at a stand till this be clear. But what is last moved, is far from doing your work. Will you put the approbation in two Houses of Parliament, before you agree who shall be this other House?

If your question be, that the persons now called to sit by writ, shall be members of the other House: this may also entangle you, for some haply will except against some of them that sit there, and then all shall be debated, severally.

The best and nearest an issue, will be to put whether this House now sitting, will transact with the other House now sitting, as a House of Parliament. This will take in all men's sense; for you must go upon the constitution. You have agreed two Houses, so that you are but a part of the constitution.

If this other House be called by writ only, and not according to the Petition and Advice, then they are the other House according to the old constitution. The only fault

* Of the Petition and Advice. See vol. ii. pp. 298, 301, *notes*.

† See *supra*, p. 319, *note* †.

that fit persons, that ought rightfully to sit, and have been faithful to you, are left out. You must come to debate the constitution, to keep you out of the flood of confusion.*

*Mr. Neville.* You are not now about transacting with the other House; and therefore to move that we shall transact with them begs the question. You are upon a single vote, in order to preparing a Bill.

I hear it not yet answered that the Petition and Advice being personally addressed to his late Highness is personal; therefore the Protector that now is, is not obliged, nor indeed empowered to call another House; so that by what is offered, you will swallow the Petition and Advice at once.

That question of transacting with them, was the debate of many days, last Parliament,† and that lies unresolved yet, and it might have been better insisted upon, then.

Your proper question, and I pray hold us to it, is whether the House you intend shall be the other House mentioned in the Petition and Advice.

*Mr. Knightley.* I cannot give my vote to that question. If it go in the negative, I know not where we are. If we give a negative upon them that are called by a writ, by the same power that we sit upon, and have unanimously owned by our vote, where are we?

If it go in the affirmative, I shall not know how to give my vote. As the constitution is now, as to the persons, I

* "Mr. Swinfen, considering the variety of opinions upon this occasion, to drive the business home to a point, propounded this question as the subject of our debate, viz.:—

"Whether this House will transact with the other House, now sitting, as with a House of Peers, with some proviso to summon the old nobility.

"This question, thus proposed, was immediately seconded and thirded by some little ones of the same party, and was soon apprehended as a thing that had been studiously contrived and forged at Court, or by common consent of that party, insomuch as before the end of this day's debate, that party became to be called by the name of Transactors." *Goddard, MS.* p. 263.

† See vol. ii. pp. 339, 377, 380, 395, 406, 424, 442.

shall hardly give my vote, not that they have two swords, one of either side,* but that appeals should lie there, &c.

Let us rather apply to them *de facto* as they are in possession.†

*Sir Henry Vane.* The more I consider this, the more difficulty I meet with. I have my eye upon the Petition and Advice, and if you consider how things are left, upon the death of the late Protector, by that Petition and Advice, I am sure, unless you shut your eyes, you may see that you are the undoubted legislative power of the nation; even by that constitution by which you are called, and the Protector himself proclaimed.

1. You know when the recognition was pressed, how much it was urged that the Protector should be made out to be so, according to the Petition and Advice; namely, by due nomination,‡ which hath never been done unto this day. That the declaration of his Highness appears not.

2. Admit that he was duly nominated himself; yet there is no power in that Petition and Advice for this Protector to nominate another House, and that power in him is defective, because it was singly given to the late Protector.

I would have you first examine, whether those now sitting have any foundation, as now called by that law; there will be no cause of complaint against you, by keeping to that rule.

I understand not that objection, that we are sinew-shrunk, and manacled, and cannot proceed; that we can effect nothing, unless we transact with these men. You have as much power to make a House of Lords with the concurrence of the Protector, as the last Parliament had.

I thought you would have gone to clear the rights and

* See *supra*, p. 557.

† "Mr. Knightley seemed to second Swinfen's motion, as conceiving them not to have a foundation upon the Petition and Advice, but as they are called by the Protector's writ, who hath the government *de facto*; so to apply *de facto* to them, but not to approve them." *Goddard MS.* pp. 263, 264.

‡ See *supra*, pp. 130, 151, 152, 263, *notes*.

liberties of the people, and that to have passed between you and his Highness, without owning the other House.

Sir, we have as much power as those that made the Petition and Advice. It is but the using of the just power. We are wandering, and cannot find the door; so great and wilful blindness is upon us. It has pleased God to confound us in our debates, that we cannot, in a third, come to a question; because we wander from our constitution.

Cannot we dispatch the business of this Parliament, and leave the other House alone till next Parliament. Why may it not be left till then? Keep but true to the things you have already. I know not how we are limited. Discourse abroad says, your vote is with them. How it comes, I know not.

It will be told you, that the House of Commons is unnecessary, and out of your ruins the *Seventy** shall be built up. Consider clearly, whether this House now sitting, have any foundation, by this calling, to sit upon the Petition and Advice. If they have not, I think you are as fit to advise about calling them, as the council that called them.

*Sir Walter Earle.* That which is moved, is the way to bring you to confusion indeed. I would have you put the question, upon what the debate has been.

*Colonel Terrill.* I move that the question be, whether those that now sit, have any foundation to sit by the Petition and Advice.

*Mr. Solicitor General.* The very constitution of two Houses of Parliament gives the other House powers. I do clearly find, that it was not personal or temporary to set up this House, but clearly a constitution. And if it be a constitution, it will be clearly intended that his successor shall have it, more clear by many clauses in the Petition and Advice.

I was not at making the Petition and Advice, but the ground appears to me that the Parliament thought fit to have two Houses. When they were made another House, their power was constituted, and the other powers are only negative. As to trying men's lives, and *meum* and *tuum*, the

See vol. i. pp. 385, 405.

constitution clearly gave them the power;* all men knew what it was.

The other House was clearly intended by the eighth paragraph; the Privy Council of his "Highness or successor" shall be "approved by both Houses of Parliament."†. Is it probable they did not intend another House?

The like by the oath both Houses shall take to be true to his Highness and successors.‡

Also, they are actually in possession of this constitution, and called by writ;§ then how can you transact without them?

And if this House claim all the power, why may not the other House vote out the power of this House, as well as this House vote out their power? If we lose this foundation, we must go to Major-generals,‖ and the Instrument of Government,¶ that had no foundation in Parliament. I hope no man means that you must go to confusion and anarchy. It was never meant that we should be upon framing new constitutions every day.

I find them in possession, and think it best to comply with it, and if there be a mind to alter the constitution, which way can you do it, but by the other House? I therefore concur with Mr. Swinfen, that your proper question is, that you will transact with the other House of Parliament, or else you labour in vain.

*Sir Arthur Haselrigge.* No gentleman will say this Petition and Advice is a law like that of the Medes and Persians. Upon turning out the Long Parliament, the Protector said all power was devolved upon him,** having been trusted with

* See vol. i. p. 387.

† *Parl. Hist.* (1769,) xxi. 136.

‡ "Successors" not in "the oath." Ses vol. ii. p. 297, *note.*

§ See *Ibid.* p. 410, *note.*

‖ See *supra*, p. 527; vol. i. p. 235 *note*, 384.

¶ See vol. i. pp. 42, 50, *notes*, "Colonel White," p. 60.

** As "Captain-General and Commander-in-Chief." He says to the Parliament, "I was arbitrary in power, having the armies in the three nations under my command:" See "The Lord Protector's speech, (Sept. 12,) taken by one who stood very near him, and published to prevent mistakes," (1654,) pp. 14, 15; *Parl. Hist.* (1760,) xx. 152, 356.

the power of the sword: it was answered nobly, No; how was it ever in you? how can it come to you? you were but entrusted. It was yielded by all learned men, that the triple cord being cut asunder, all the power was in you, and it is in you now. The original power reverted to the people.

Afterwards, there was a little *thingum** that called themselves a Parliament, that were dissolved; and some of them went to Whitehall, and delivered up their power to the Protector, but how could that be the power of the people, who were never trusted by them. Afterwards he was advised that that government which he intended, could never be set up by consent of the people; therefore he must assume it to himself.

Hereupon the Protector, with the advice of some whom he called to himself, makes a law without doors. The Instrument of Government, which was brought hither, he said of it, other foundation could no man lay, and that the Parliament and it were twins; that the elder brother. You see how that was broken, and perished like a gourd; nay, worse. I would not offend. It was made by the sword, and by the sword it must be maintained and not otherwise. That, therefore, perished, because it was not upon a good foundation.

After this came Major-generals.† I hope we need not fear coming to Major-generals again. Last of all, he set up a faction or a forced thing;‡ but, however, these gentlemen could not make any thing greater than themselves; they could set up nothing above the people; if they did, it was void, *ipso facto*.

The Petition and Advice may be altered by you if you find inconveniences in it. What confusion can we be in, so long as we have voted a single person. Why may not this noble person, with your advice, be able to keep all our enemies at home and abroad in peace. Fear not. I fear nothing but doing our duty. If there be such a power set up as we cannot touch, let us pull off our hats to them. But I shall move that this may be the subject of our debate, and let us be con-

* See vol. ii. p. 67, *note*. † See *supra*, p. 567.
‡ The other House.

vinced of it by law, right reason, and divinity, if there be any, because, if we go round and round thus, we shall be called Roundheads indeed.

If we thus spend our time, the nation will grow weary of us, and the Cavaliers may come in the Round, as we turn round. It will be told us, that *salus populi** will make a fewer number more profitable.

Let us go and debate the Petition and Advice by clear law and reason. Understand what foot you go upon; else let us not sit at all. Let your question be to-morrow, whether those Peers (persons I should say, yet they call themselves Peers,) that now sit in the other House, have any foundation to sit by the Petition and Advice.

*Sir John Lenthall.* Our foundation is like the laws of Medes and Persians.† It is not prudence for us to rake into the proceedings of the former Parliaments. We are a free Parliament, and it is by the Petition and Advice that we have this freedom. We know how things were then. Before the Petition and Advice, there were no free Parliaments.

Shall we come hither to make a law this Parliament, that may make work for another Parliament to pull down? What have we done, but looked into the laws of former Parliaments?

I wonder to hear it moved,‡ that the other House may be let alone till next Parliament. That is the way to undo all you have done.

I see you cannot admit the old Lords without great inconveniency, though I confess my heart is along with it.

I understand no danger of our lives, liberties, nor limbs. The other House have exercised it in no age. A person sentenced by the King and House of Lords to lose his hand, the Judges in Westminster Hall would not execute it, because the Commons concurred not. The King of France got the people fettered by a law on their own consent, and never had Parliaments since.§

The privilege is very great that is offered, that the power

* See *supra*, p. 559. † *Ibid.* p. 567. ‡ *Ibid.* p. 566.

§ "About an hundred years after *Magna Charta* was established,"

of approving hereafter, shall be in this House. Make your question at present, that this House will transact with the other House.

*Sir Thomas Wroth.* If the Petition and Advice were as ancient as the Conquest, if we find any inconveniency in it, we may repeal, alter, or mend it. I would not have interest sway with us. If my brothers sat in this House, and had no right, I should be against it.

A noble knight has made himself famous in the world, for refusing to sit there. He shall have my vote to sit there.

says *Rymer*, "was that project of the modern Parliament in France, set on foot to render unnecessary the ancient assembly of the States;" and "to the unwary multitude served the turn as well" as "the great old Parliament;" though "the French Parliaments in their scarlet robes, knew none of that sovereign power which their plain ancestors so long had exercised in their grey jackets." (See Hotoman's *Franco-Gallia.*) At length "it was the boast of Louis XI. that he had *mis la royauté hors de page*, so ordered matters that the royal state should be no more a pupil."

Mr. Rymer, writing in the 17th century, describes "the Parliament of France" as "quite antiquated and subdued. The ghost and shadow of the defunct," he adds, "has appeared three or four times since Louis XI.; but to revive that Assembly in its full and perfect vigour, requires a miracle like the resurrection." *Antiquity of Parliaments*, (1714,) pp. 7, 28, 29, 31, 54.

From the following anecdote, the restoration of "perfect vigour" to "that Assembly" could scarcely have been desired. When the art of printing had made some progress among the Germans:

"Trois d'entre eux, en 1470, avaient apporté en France quelques épreuves de cet art naissant. Ils exercèrent même leurs talens sous les yeux de la Sorbonne. Le peuple alors très grossier, et qui l'a été très long temps, les prit pour des sorciers. Les copists qui gagnaient leur vie à transcrire le peu d'anciens manuscrits qu'on avait en France, présentèrent requête au Parlement contre les imprimeurs. Ce tribunal, (un corps plus jaloux de conserver les anciens usages que soigneux de s'instruire de l'utilité des nouveaux) fait saisir et confisquer tous leurs livres."

This King, "Louis XI." (See *supra*, p. 191, *note*) "qui savait faire le bien, quand il n'était point de son intérêt de faire de mal," obliged the Parliament, in reparation of their unjust *arrêt*, "payer aux Allemands le prix de leurs ouvrages." See "Histoire du Parlement de Paris. Par M. l'Abbé Big * **. à Amsterdam." (1769,) 1, 77, 78. I have seen this *Histoire* attributed to Voltaire.

If our liberties be forced from us, we have nought but prayers and tears; but let us not yield them, or betray our liberties. The Supreme Magistrate is a person highly worthy and honourable; but how those that are about him shall advise him, we shall hear hereafter.

*Serjeant Maynard.* If you come not to some conclusion, and admit the Petition and Advice, at least some *vestigia* of it, you will run round indeed.* A fearful precipice, is before you, of confusion. I perceive two great questions are raised about it:

1. Whether the Petition and Advice be a law.

2. Whether the persons be called to the other House pursuant to that law.

And unless the Petition and Advice be understood to be no law, the arguments they go upon are out of doors.

It is a dangerous thing to go upon the first point. The questioning of that, will overthrow all the proceedings of this Parliament. I wonder how any gentleman can, with sane conscience, produce two contradictory conclusions. One law good under a force, and not so another law, under a force. If you make the Petition and Advice no law, as to one particular, how can you make it good as to others? You will overthrow abundance of things. The Dean and Chapter, and King's, and Queen's, and Prince's lands, were sold by that law,† and all your ministers' settlement established.

In effect, to make that no law, is to make it no Parliament. That will go even to your own constitution; or what may succeeding Parliaments say, if you make that precedent. Till you declare it no law, I shall understand it a law.

But it is a greater question, whether the persons now sitting be duly called according to that law. It is objected,

1. That because it is personal to the Protector, and goes not to the successors. It was learnedly argued by Colonel Tirrel.‡

* See *supra*, p. 569.

† First by a law of the Long Parliament. See vol. ii. p. 233.

‡ See *supra*, p. 351.

But under favour, it is very clear that, taking it for a law, the successor Protector has a power to call a Parliament according to that Advice.

Look into the preamble. It cites the mischiefs there intended to be remedied. The scope had more respect to provide for succession, than for the present.

As to the second objection, in the first article it is true that it is personal, and personally expressed, and it is impossible it should be otherwise; but in the second article "that your Highness will for the future be pleased to call Parliaments,*" if it be not understood of successors, it is a contradiction in itself. It must be meant of the constitution. It is clear there are to be two Houses in the very constitution, though not in the persons, and we are not upon the persons there, as Sir Henry Vane moved;† but upon the constitution.

But then in several other clauses, the word "successor" is expressly named, and both Houses of Parliament,‡ which shows the intention of the Act, and the cause of nomination in the additional Act, is expressly your Highness and successors.

As to the Privy Council, none can be admitted without approbation of both Houses of Parliament, the like for supply of members in the time of your Highness and successors. How then can there possibly be a supply to a *non ens?*

Lastly, the very persons are to take an oath, before they sit in either House; before a Commission authorized by his Highness and successors.

This is the way to examine and expound an act of Parliament according to the meaning of those who made it. A will is therefore compared to an Act of Parliament, because it is to be expounded according to the intent. Let any man lay his hand upon his heart, and consider whether it was not clearly intended that the successor should call two Houses.

It is also objected, that there is no positive authority given by the Petition and Advice to those persons; but *exceptio*

* See vol. i. pp. 380, 381. † See *supra*, p. 545, *ad fin.*
‡ See vol. ii. p. 297, *note.*

*probat regulam.* Whoever says that I shall not do, in that case, admits that I shall do, in another case. No man will understand the law to be otherwise. There is a general law, that they shall have their privileges. All things shall be done according to the laws and customs of the nation. Is not that clear, that they should take the customs for their rule?

How many revolutions have we run through; first a little thing,* then another thing, then the Major-generals, then this; and what is this, a grant? This is not a grant, but a restitution of what was interrupted by a little Parliament, and an Instrument of Government. It is a humble Advice and Petition, a qualified restitution, and nothing like a grant. That is very clear. Yet a grant to a King goes to his successors, as adjudged 2 Henry VII. though the word successor be not there. But how to compare a Protector with a King, I know not; yet the construction hath been in all Courts alike. If this doth not mean succession, what can it mean but confusion? Though our laws be not like the laws of the Medes and Persians,† yet our foundations are, or ought to be, like their laws. If this be a law, then I may boldly say you cannot alter it by way of vote; nor make any law, but by their consent.

Consider what had fallen out, if this had not been. If no Protector had been named, who should have called the Parliament? If all power were in the collective body, who shall call out this body? London, North, West, all claim to be the collective body. One says, I called. Another says, I called. If this was not meant that successor should call, what should become of us then? Who should call? What should they call?

If it be, that by a law they are another House, then may they as well take you away, as you take them away. How ancient is the law for a House of Commons alone to make laws? Not older than 48. No Englishman will claim to it.

Whither can we go, but into a collective body, and where

* A *thingum*, see *supra*, p. 568. † *Ibid.* p. 567, *ad fin.*

do we go? We suppose ourselves to be the representative, but how came we to be so? Who brought us hither? If it is not by writ, we shall rest no where. If we had been called for another purpose to this place, these walls had not made us a Parliament. The writ gives us a being to treat with the nobles, &c.* We come here by a Commission, and by wounding them, we wound ourselves through their sides. If this be a law, then the other House is a House by that law; then you cannot meddle with them.

I would have you make it your question, whether you will transact with this House. The same arguments are against the one House that are against another. I know not what to think of it. I doubt then we should have no House at all.

It is not prudent to dispute the right. If we vote in the old lords, then I shall not doubt that their sons will come in, and then where will your rights be? There is no complaint from any of them. Will you restore them *ex officio?*

Lord Coke, no flatterer of prerogative, tells you plainly, it is no law that is not made by the three estates.

I conclude with Swinfen's motion. Let it be your debate that we will transact with those that sit in the other House.

*Serjeant Wylde.* I hope we all bring with us a principle of unity. The matters mostly insisted upon are,

1. The ancient right of the Lords.

2. The right of those by the Petition and Advice.

I cannot understand aught of the argument that is built upon the foundation of France,† nor aught of that kind.

I do not see but if you allow another House, you must in justice and right restore the old Lords. *Quod jure fieri potest, id justum est.*

We are to maintain the right and liberties of the people. We have been turned out of our freeholds.

Admit that some of the Lords have been nocent; with what reason, justice, or conscience, can you let the innocent suffer for that? A Parliament is the firmament—.‡

* See *supra*, p. 511, *note*. † *Ibid.* p. 538, *ad fin.*

‡ A blank in the MS. The lords were, probably, the primary planets.

I see what wresting and screwing of laws there is in all cases. I beseech you let not the Petition and Advice be our rule. We are a free Parliament. They were not so. They have given away all that then had been fought for, and redeemed. Why were your members kept out?* Shall a number of men thus called together make laws to bind the whole nation.

The lands of monasteries were got by tricks in the time of Henry VIII.† There is nought so ordinary as for Parliaments to examine laws. I would have the Petition and Advice examined, and examined to the bottom, as to what you have given away. It is a proper work for this Parliament.

That Parliament was called to set up that power, as to which you know how it came in. I would not have us go to dispute about transacting with that other House till we have first examined their foundation. Consider whether there be such another House before you debate any more about transacting with them.

*Sir John Northcote.* It was minded you by my learned countryman,‡ that no law was rightly made, but by King, Lords, and Commons. I am sure this law was not made so. If you admit this for a law, you give away all the rights and liberties of the people at once; such a thing as never was done. How that law was made, I shall not examine. The Triennial Bill had taken care for calling Parliament,§ if the Petition and Advice had not; or the *lex naturæ* directs us how Parliaments should be called.

In the Saxons' time, every May-day, the chief officer and great council were chosen.‖ All power, I do affirm, was de-

* See vol. i. p. 262, *note* ‡. † See *supra*, p. 203.

‡ See *supra*, p. 574. § See *supra*, p. 352, vol. ii. p. 427, *note*.

‖ "When the English and French," says *Rymer*, "came from Germany to people Britain and Gaul, the German liberty and moderate sway were transplanted with them, and still the Common Council had the main stroke in all weighty affairs. *Ubi Rex* (says Tacitus) *vel princeps audiuntur auctoritate suadendi, magis quam jubendi potestate:* where the king or prince are heard, for the reasons they bring to persuade, rather than for any authority to command." *Antiquity of Parliaments*, pp. 12, 13.

rivative from the people. After the Conquest, in Henry III.'s time, the Lords were not hereditary.

Lord Molesworth, in 1711, to counteract the prejudices in favour of divine right, and unlimited regal authority, translated and published "Franco-Gallia, or an account of the ancient free State of France, and most other parts of Europe, before the loss of their liberties. Written in Latin by the famous Civilian, Francis Hotoman, in the year 1574." The following passages, where the author refers to *le champ de Mai*, may serve, especially from the similarity remarked by *Rymer*, to illustrate the observation of Sir John Northcote, and to show, also, that France, so long the vassal of a *Grand Monarque*, and now doomed again to endure a *Bourbon*, was for ages one of the freest countries in Europe.

"Our ancestors wisely ordained that every year, on the Calends of May, a public council of the whole nation should be held; at which council, the great affairs of the nation should be transacted, by the common consent and advice of all the estates.

"Whereas it may be objected, that most kings have a constant privy Council to advise them in the administration of public affairs, we answer that there is a great deal of difference between a counsellor of the king, and a counsellor of the kingdom. This last takes care of the safety and profit of the whole Commonwealth; the other serves the humour, and studies the conveniencies of one man."

It appears that Charles Stuart would have had no chance of a permanent establishment, had he become a Chief Magistrate of Franco-Gallia. "The very first that was created king, when the people had found him out to be a profligate, lewd person, wasting his time in adulteries and whoredoms, they removed him from his dignity by universal consent, and constrained him to depart out of the territories of France." *Franco-Gallia*, chap. vi. x. Lord Molesworth republished this translation, in 1721, with a very free and interesting political preface.

On the Anglo-Saxon government, see "An Historical Discourse of the Uniformity of the Government of England," (quoted vol. ii. p. 266,) pp. 12—113; Bishop Squire's "Enquiry into the Foundation of the English Constitution," (1745,) pp. 170, 173, 190. This author remarks that "when we meet with the *Nobiles Angli, totius regni proceres, optimates*, and such like expressions, as we frequently do, in the Acts of the Anglo-Saxon Synods, and Wittena-gemots, we are not to understand the *nobiles*, &c., in the sense some people pretend, as if none but the nobility, or people of title, were present at them; but rather of the English in general, of the free-born military Anglo-Saxons, who were all *noble*, all *great* men of the kingdom, in comparison of the remnant of the conquered Britons, of their slaves and freed-men, who made up the bulk of the nation." *Ibid.* p. 112. *note.*

The first hereditary Lord was one Beaumont, in Henry VI.'s time.* If usage can make a right, they had it, but not for themselves, but for the good of the nation.

I would have this examined, whether it be for the good or destruction of the nation that this House now in being should stand. They ventured their lives, but not their fortunes. The other Lords did venture both, and that they should be excluded and these advanced, is not just nor reasonable. I would have you first put the question, whether the Petition and Advice be a law.

*Mr. Bodurda.* Unless you come to some resolution about transacting with them, you had as good do nought. What should we sit here for, if we will not transact with them? Our proceeding is at an end. If we vote them down, they may vote us down; but if you vote that you will have no transactions, then you must go on some other way to settle the nation. I would have this debated to-morrow morning.

*Captain Baynes.* I move to let it be known why we must either transact with them, or our time is lost. I would have that gentleman explain.

*Mr. Trevor.* This is no more than forty have moved, and the debate has run upon that. I desire it may be put whether you will transact with the other House, as was moved before. Let that be the matter of your debate to-morrow, and do not rise till you have a question.

*Sir Henry Vane.* It is hard to limit us to a time, that before we rise the question shall be put. If the Providence of God so order it that we cannot come to a question, let not us say we will have a question before the House rise. Let us not turn day into night, nor starve ourselves. The people are attending without, upon your committees, at great charge.

I was called out at one, upon occasion, to Sir T. S ; so could not attend the debate upon which question should recede. It seems there was a hot debate till three, upon it,

* "1439. John Beaumont, created Viscount Beaumont, being the first of that title in England." *Chron. Hist.* (1747,) i. 45.

and with much ado brought to this result, as I find entered in the Journal, viz.

The question being propounded that it be the matter of the debate to-morrow morning, that this House will transact with the persons now sitting in the other House, as a House of Parliament.

The question was put, that the question be now put.

The House was divided.

The *Noes* went forth.

*Noes* 113. Sir Arthur Haslerigge and Mr. H. Neville, Tellers.

*Yeas* 177. Sir John Copplestone and Mr. James Herbert, Tellers.

So the question passed with the affirmative;

And the main question being put, it was

Resolved *ut supra.*

Ordered, that no other business do then intervene.

Resolved, that Colonel Crompton shall have leave to go into the country to attend his own occasions for a month.

The Committee of Privileges sat in the House, upon the business of Dartmouth, between Major Thompson and Mr. Burne—*Serjeant Waller* in the chair.

The difference lay between the Aldermen of the Borough and the Commonalty, which had most right to elect. Mr. Burne was chosen by the Commonalty, and it inclined upon the debate to his part. Quere, what was resolved upon it?

The Committee I left sitting at 8, it being post night.

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*Wednesday, March* 2, 1658-9.

*Mr. Speaker* took the chair at nine.

Prayers by Mr. Cooper.

*Colonel Hatcher* offered a Petition from the Freemen in Lincolnshire against the drainers, which was read,* and referred to a Committee to meet this afternoon.

* "A petition read from the inhabitants of Deeping Fen, where 240 families were drowned, 20 towns in danger to be surrounded, and actually more hurtfully drowned now than ever. They moved against an

*Mr. Annesley.* The Deputy-clerk of the Commonwealth in Chancery attends at the door, touching the mending the return of Mr. Sadler for the Borough of Yarmouth, in the Isle of Wight.

The Deputy-clerk was called in, and said he could not make a return, because the indenture came not to his hand till after the Parliament sat. He being withdrawn,

*Sir Arthur Haslerigge.* You may cause him to return it.

*Mr. Bethel.* The Act for Triennial Parliaments warrants the freeholders to return, in default of the sheriff.

*Mr. Turner.* The sheriff may return, he being the proper officer. It cannot be otherwise done.

*Captain Baynes.* I move that the Deputy-clerk stay at the door till the sheriff come: and it was ordered accordingly.

The order of the day was read at ten, touching the debate adjourned yesterday, whether this House will transact with the other House, as with another House of Parliament.

*Mr. St. Nicholas.* There are two reasons why you should not yet transact with them under the notion of another House.

1. Because you have not yet limited their powers. In all ordinary dealings between man and man, if several parties would trade together, they trade not till the covenants be perfected.

I am a plain countryman, and shall offer you what country experience tells us. If a man hath got young colts, he will make good chains before he useth them. If I be to put two or three young horses together, I fasten them well together, lest they run away. This other House is young and of high mettle. I think it necessary you should fetter and bound them, before you work with them. If you first vote to transact, and then carry up a Bill to bound them that they shall not be hereditary, they will say, you have voted us, and cannot now bound us.

old Law called Lovell's Law, who was to have a third part in 1000 acres, I think, for his undertaking. They pray a new Law and Act, for draining, and remedying of the inconveniences." *Goddard MS.* p. 268.

2. Because they are not yet so declared, to be another House of Parliament. All the footing they have had hath been from the Petition and Advice.

Great reasons have been offered by Serjeant Maynard* why you should look upon that as a law, and why a successor has power to issue out warrants for summoning another House, according to that law, by comparing that law in several parts together.

But, admit that he had power; yet, under favour, if that person be not such a successor, within the meaning of that law, as is commissioned to issue out such writs, then I am sure they are not well issued, nor these men well called. They are not such another House.

That Act gives power to the late Lord Protector to nominate and declare a successor in his lifetime. Where is that done? Where is the record?† No authentic instrument has been brought before you to make that law. If he be a King to all intents and purposes, as is told you within these walls,‡ such a power could not pass away a title to three nations, but by matter of record. You have since declared his Highness to be Protector, and I do cheerfully join with it: but at that time, he had not power as such a successor, and he doth not judicially appear to you to be such a successor as was enabled to issue writs to this other House.

There was a case yesterday, and a piece of it this morning, Mr. Sadler's. You were satisfied he was a member, yet because it did not appear to you, judicially, that he was duly returned, you thought fit not to transact with him. As I may say, the Protector was not the successor, and they are not the other House of Parliament.

*Colonel Terrill.* We spoke in the bush before. We shall now speak plainly. We ought not to transact with them, for reasons before offered. Something before fell from me,§ which hath been endeavoured to be answered. What was offered, produces three questions.

* See *supra*, pp. 571—574.
† See *supra*, p. 130, *ad fin.*
‡ See *supra*, p. 531.
§ See *supra*, pp. 513—525.

1. Whether the Petition and Advice be a law, and whether his Highness can call another House by virtue of that law?

2. Whether the successor by that law, be empowered to call another House?

3. Whether he be empowered by the common-law, to call a House of Lords?

I am sorry the first should come again into question. Somewhat was observed in the debate on his Highness's recognition. It was moved then, that the House might be satisfied that it was a law.* That law was not dealt with as a law; the print differing from the original Act. A whole article was omitted, and the passing of it not Parliamentary. This hath not yet been answered.

I desire that the Journals and Rolls may be brought, to see if the formality of passing a law has been observed.

If it be an Act, and if the Protector's title be by the Petition and Advice, then there is a question, whether his Highness be brought in according to that law. I am sorry this should come into question to be now debated. That he is, we agree; we have voted it: but *quo modo* appears not. I thought he had two better titles than that, and that this Petition and Advice was the worst of three:—

1. His possessory right, which was sufficient title for him to call a parliament, and for us to submit to it.

2. The constitution of this House. I should be sorry it should be stirred. I suppose either of these to be best. This of the Petition and Advice is the worst of all.

As to the second question, whether, admitting it to be a law, his Highness be empowered to call the other House by virtue of that law.

The words, it is clear, are wanting; and the learned Serjeant's seeking for a meaning, by picking out the sense,† doth yield that the words will not bear it. Where then shall we find the meaning? If you appeal to the makers of that law, some say it was set up in lieu, others say in bar of the House of

* See *supra*, pp. 129, 130. † See *supra*, p. 572.

Lords; so that we cannot find the meaning from the makers. We must then have recourse to the letter.

"That your Highness, &c."—that cannot imply a successor. I have said enough. He is a sole corporation, and the grant extends not to a successor. It was argued that he is King to all intents and purposes; yet that was meant of the power, not of the capacity. Highness signifies no more than for life.

If a grant to his Highness by Parliament for term of life, and after name successors, this does not enlarge the grant, and it is all one as if the words had been expressed. Your Highness, during your life, is all one as if he had said a grant for life.

All I find in the preface relates only to "the succession in government;" only I find the word "settlement."* That cannot be applied to Parliament; for unless the old Lords were taken away to build another House upon it, it is rather to unsettle than settle, unless they had taken away the old House.

2. As to the words in the oaths. The word "successor" may be true, although there be no other House of Parliament. It doth not imply both Houses.

3. We have nought to do with disposing of the Army.

4. As to that of approving the council, where any mention is made of the two Houses it may stand *reddendo singula singulis;* it may be understood only of the two Houses during the life of the Protector, and not to his successors.

I am clearly satisfied that the word "successors" in all the subsequent clauses does not enlarge the estate in the premises, no more than if a grant of land be made to his Highness, and then that he and his successors shall have all the royalties.

Admit the honour of Windsor† were granted to his Highness, and that he and his successors shall have all the privileges; his successors shall have all the privileges, but not the honour: it enlarges not the grant on the first article. It is agreed, as to the nominating successors, that it is only person-

* "Upon just and legal foundations." *Parl. Hist.* (1760,) xxi. 130.

† "The manor or honour of Windsor." *Magna Britannia.* i, 189.

al; that his Highness's successors shall not name his successor by virtue of that clause. If we grant this in the second article, we admit the first, that the same power is granted for his Highness's successors to name his successor. This might nominate, and the next, and so *ad infinitum*.

I omitted another answer. Those that his Highness named were members for last Parliament only, and not for this. The explanation reaches not this Parliament. They must be approved here.

As to the third argument. His Highness might have called them by the law.

He hath power to call another House by the Common Law, although he hath not power by the Petition and Advice, and if he had but called the old nobility, he had done his work.

If he had no right by the Petition and Advice, he comes in by his possessory title. He comes in under the law, but not paramount to the law.

Henry IV. Henry VI. Richard III.: They came in under that law.

If he came in so, under the law, I may admit all for laws till they be repealed. So then there is another bar in the way, a law in being to take away the Lords' House; so while that is of force by the Common Law, another House could not be called.

I have no prejudice against any person in that House, but I cannot agree we should yet transact with them. If you and his Highness please to approve them, to sit upon another foot, I shall not be against it. I move, therefore, not yet to transact.

*Mr. Letchmere, Attorney of the Duchy.* This question is well come in before you; for which way soever you go, the wind would else have been in your face till you got over this question.

I cannot say how well the questions are stirred, but I shall answer them.

1. Whether the Petition and Advice be a law.

I think while so much pains are taken to answer it, it is an admittance that it is a law; though there is not much weight to be laid upon that.

2. Whether his now Highness be Chief Magistrate by that law.

This is the first time that ever any Prince in possession had his title questioned; or that the title of Chief Magistrate was doubted or considered in Parliament. Therefore this is a single precedent, unless that of 39 Henry VI. which had a miserable event. Richard of York put in his claim,* but it had no good endment.†

All Parliaments have rested well pleased with the possessor, and, being called by him, have gone on to make laws and never disputed the title.

The Parliaments then had more evidence of new titles than now they have.

Observe the passage of the two late queens, whose title depended upon the will or letters patents of their father. The Parliaments then so well admitted the title that they never disputed it, though both could not be legitimate.‡

* In 1460, See *Parl. Hist.* (1762), ii. 313, 324. "Après une délibération qui dura plusieurs jours," says *Rapin*, "il fut arrêté, que Henri garderoit la couronne sa vie durant, et que le Duc d'York seroit déclaré son successeur. Cette résolution fut reduite en Act de Parlement.

"Le jour après, il se fit une procession à St. Paul's, où le Roi assista, la couronne sur la tête, étant accompagné du Duc d'York." *Histoire*, (1724,) iv. 171, 172.

† Dec. 31, (1460,) Richard Duke of York fell in the battle of Wakefield. "Le jeune Comte de Rutland, son second fils, qui n'étoit âgé que de douze ans, s'enfuyant avec son gouverneur, fut atteint par le Lord Clifford, qui lui plongea son poignard dans le sein, malgré les instantes prières de ce gouverneur, qui lui demandoit la vie du jeune prince. Ensuite, le même Clifford, ayant trouvé le corps du Duc d'York, lui coupa la tête, et lui ayant fait à la hâte une couronne de papier, il la mit au bout d'une lance, et alla la presenter à la Reine, qui la fit planter sur les murailles d'York. C'est aussi que finit le Duc d'York à l'âge d'environ cinquante ans." *Ibid.* pp. 173, 174.

‡ In 1544, (35 *Hen.* VIII.) an Act passed, in which there is "a recital of a former, (28 *Hen.* VIII.) touching the succession." According to these Acts, the people were left, by their professed representatives, to be bequeathed at the royal pleasure, like any other goods or chattels, cattle and creeping things, belonging to the monarchy.

"Our most dread Sovereign," says the courtly Parliament, "intendeth by God's grace, to make a voyage royal in his most royal person in-

Let us exercise our duty in conscience and prudence.
But let us now to our business.

to the realm of France against the French king." Then, in accordance with the pleasure of "his Highness," who is "most prudently considering how this realm standeth in the case of succession," it is "enacted that in case the King's Majesty, and his only son Prince Edward, should decease without heirs, the imperial crown, and all other the premises shall be to the Lady Mary;" and in case of her leaving no heir, "to the Lady Elizabeth and her heirs;" provided they comply "with such conditions, as by his Highness shall be limited by his Letters Patent, or by his Majesty's last will."

In case of non-compliance with the royal conditions, or defect of heirs, "the Imperial crown, and all other the premises," shall "remain, succeed, and come to such person and persons, in remainder or reversion, as shall please his Highness," as expressed "by his last will in writing, signed with his most gracious hand." The penalties of High Treason are then denounced on any who "interrupt this Act, or any estate limited thereby." See Lord Herbert's *Henry* VIII. (1740,) pp. 430, 432. See also Bishop Burnet's *Reformation*, (1728,) i. 281, 282. *Parl. Hist.* (1762,) iii. 195, 196.

This "most dread Sovereign," to whose unqualified discretion and provident care, signified by "his most gracious hand," an obsequious parliament now committed the great interests of the people, has been thus characterized by Sir Walter Raleigh.

"For King Henry VIII., if all the pictures and patterns of a merciless Prince were lost in the world, they might all again be painted to the life out of the story of this King. For how many servants did he advance in haste, (but for what virtue no man could suspect,) and with the change of his fancy ruined again, no man knowing for what offence? To how many others of more desert, gave he abundant flowers from whence to gather honey, and in the end of harvest burnt them in the hive? How many wives did he cut off and cast off, as his fancy and affection changed? How many princes of the blood, (whereof some of them for age could hardly crawl towards the block,) with a world of others of all degrees, (of whom our common chronicles have kept the account,) did he execute? Yea, in his very death-bed, and when he was at the point to have given his account to God for the abundance of blood already spilt, he imprisoned the Duke of Norfolk, the father, and executed the Earl of Surrey, the son; the one, whose deservings he knew not how to value, having never omitted any thing that concerned his own honour and the King's service; the other, never having committed any thing worthy of his least displeasure; the one, exceedingly valiant and advised, the other, no less valiant than learned, and of excellent hope.

"But

1. Consider how the House of Lords came to be taken away. Kingship was taken away first, and then Lords followed.

In that famous year, (48) that did produce many wonders, not only the kingly office was taken away, but also chief magistracy in a single person. The House of Peers were the supporters of it, and so not consistent with a popular government. I admit that Parliament did prudently. I would have the memory of them famous to their last breath.*

What followed then? How were our liberties overrun. I will not say how the single person came to the government, nor of past Parliaments, save only the Parliament in 56. They looked upon their rights as in a bleeding condition.† They, in a fair way, did redeem the people's rights. It was a Petition of Right,‡ and brought the heads of our liberties above the water; so that though that Parliament did not fully recover all the rights, they went a great way, and deserve not those reflections.

(He ran over the Petition and Advice, wherein our rights and liberties were restored as by that Petition of Right.)

You had the fruits of it. Immediately the doors of

"But besides the sorrows which he heaped upon the fatherless and widows at home, and besides the vain enterprizes abroad, what laws and wills did he devise to establish his kingdom in his own issues; using his sharpest weapons to cut off and cut down those branches which sprang from the same root that himself did? And in the end, (notwithstanding these, his so many irreligious provisions,) it pleased God to take away all his own without increase." *Historie of the World*, (1614,) *Preface*.

Horace Walpole, (Lord Orford,) speaking of the treatises *De Christiani Hominis Institutione* and *De Instituenda Pube*, attributed to Henry VIII. says:—"If the pieces ever existed, it would be curious to see what rules for the education of youth, or for the institution of a Christian, were laid down by a man who confounded every idea of government and religion, who burned martyrs of opposite sects at the same stake, [see *supra*, p. 522,] bastardized his own children, and then entailed his crown upon them; and who seems to have provided for nothing but a succession of civil wars, by the unwarrantable disposition he made of his dominions." See "Royal and Noble Authors," (1759,) i. 16.

* See *supra*, pp. 63, 64, 210, *notes*. † See vol. i. p. 262, *note* *.

‡ See *supra*, pp. 171, *note*.

Parliament flew open,* both in that Parliament and this free Parliament.

The Petition and Advice pretends not to perfection. It says only, it will prove some remedy. It does not totally, but in degrees, restore our liberties. In some places it may be amended.

We come now to the constitution of this law.

It is objected that the successor is not named in the second and third paragraph. The word "successor" is not in all other parts that concern the rights of the people, yet I hope none will say he is not bound by that.

There are a hundred Acts of Parliament wherein the successor is not named, yet the successor in possession is always bound by them. Our books are full. Hill and Grange's case, with Plowden's Comment, does fully clear this point.

Now for that other House.

That those honourable persons that have been courageous and persons of fidelity are not restored, I lie down under the objection. The Act that took them away, does not exclude them from being called to public council.† I hope they may in time be taken in.

The other House does now consist of persons that deserve as well from the English nation as ever any persons that sate there. It may be they may fall short in birth and pedigree.‡ The Romans always preferred virtue.§ The time may come when those honourable persons amongst us that have deserved the like honour shall be translated from us. I speak not to be rid of them.

My motion is, that you would transact with the other House, and set both your doors open.

*Mr. Bence.* I am glad persons are so quick-sighted as to see many of the laws so far off. It does not appear to me why the persons that have deserved so well should be excluded from their right. Possession is eleven points of law.

* See vol. ii. p. 316, *note.*

† See vol. iv. p. 12, *note* ‡.

‡ See *supra*, p. 535, *note.*

§ See "Sir Thomas Smith," vol. ii. p. 456, *note.*

Those gentlemen that are in possession, you cannot get them out by force, but by a wile.

I would have this previous vote, that nothing in the vote shall prejudice the title of those honourable persons of the old House of Lords that have faithfully served you.

*Colonel Morley.* It is said, possession is eleven points of law. Now you would have a salvo for the rights of old Lords. I am against that. I doubt words will not do it. If you pass this, they have eleven points, and give them another, they have twelve. You are going to pass all by a lump.

It was told you* the French by sudden vote gave away all their liberties. Let not us do so rashly.

They are all officers, counsellors, judges, and chancellors. If any complaints shall be against them, you must complain of them to themselves.

It is said you have gained by the bargain, in putting down the Major-generals. You have mended the matter well, in giving them a power in your legislature.

Have not many of those persons been guilty of the remonstrances and forces upon Parliaments? May they not force their resolutions upon you by the same rule?† I would have them bounded.

*Major Beake.* It is said the persons ought to be excepted against for their military capacity. I would have the sword less, if there were not need. In former Parliaments, Lord Marshals, Lord Admirals, and Lord Lieutenants of Counties, were always in that House.

In that they are there, therefore let us transact with them.

It was moved, that none would deal without a contract.‡

* See *supra*, pp. 569, 574, *ad fin.*

† "Hab. Morley. You have taken away the Major-generals out of the field, and from exercising their power in the country, and you are now making of them Major-generals in Parliament: they are most of them military men, that have forced Parliaments before, and if you make them part of your constitution, they will force your resolutions." *Goddard MS.*, pp. 271, 272.

See "Mr. St. Nicolas," *supra*, p. 579.

Can we contract before we transact? Must not we declare our sense to them, and they to us, before we can transact? If any exorbitant executive powers are in their hands, mutual correspondencies will take them away.

I will not say but there are men of will there, yet I doubt not but there are men of reason there. I doubt not but they will make common safety their end, as well as you will do. If it be your advice to a handful* sitting there, if you say it is for the good of the nation, they will not be against it.

It is objected that the Petition and Advice wanted the formalities of a law.†

The Parliament making a law, may dispense with the second or third reading. They are properer judges than any without doors. It may as well be said they are not a Parliament. It is told you, the meaning of the Act cannot be found out by inquiring of contrary opinions. The best way to judge is by comparing the parts.

*Colonel White.* I think you have a great and weighty business before you. You have all now before you. This transacting is the owning the persons, the powers, and all.

I shall not mention aught of the arguments about the Petition and Advice. It is learnedly argued both ways, it is clearly argued now, that those are a House of Peers. I would have the constitution examined, if it be well founded. If the Petition and Advice want words of constitution, make it so. I find not a word of constitution in it. It is said, it is implied. I have heard it said, that an Act of Parliament is *lex loquens*, and cannot be supplied by implication. You have already declared that you will have two Houses, but you have also declared that you will bound them; and I hope you will examine the persons.

All erroneous judgments have their appeal at last thither. Admit an erroneous judgment, whither shall he have his recourse but thither, be it from Ireland or any benches. You appeal then from a Lord to a Lord, to the same person sit-

* See *supra*, pp. 535, 547 *note*. † See *supra*, pp. 581, 583.

ting upon a form, as was sitting upon a bench. It was very rare that Judges were called to vote. Their Judges always sat on woolsacks.

Three Lords Chancellors,* two Chief Justices are there; and you may have one Chief Baron there,† as deserving well as any of them.

For the law I doubt we shall be in a sad condition.

Also for military power.

The Colonels are now more than the Lord-lieutenants. If you give this army a negative upon you, put the case you make a law to disband all or part of your army. Power is a spreading plot against nature. One more to these ten Colonels, makes a quorum in that House. Thus the people of the nation may be destroyed by a power.

When you come to constitute powers for posterity, bound them as well as you can. I cannot at present give my consent to transact with them, till they be thus bounded.

*Mr. Attorney-general.* They that would make a settlement, and not upon this foundation of the Petition and Advice, cannot erect it upon foundations of righteousness and peace. For the person of the Chief Magistrate; if he is but possessionary Protector, he is then hereditary and not subject to any boundings. If you do not bound him, his good-nature will, without gall or guile, as is said.

But since the Chief Magistrate is elective, and this House electors, I wish the other House elective, and not hereditary; and so the Constitution will be homogeneal.

The Petition and Advice has been beaten so thin, nothing more can be said on it. I suppose there is a general inclination to conserve the Petition and Advice for a good law, even among those that speak against it, and the other House to be well constituted and well called. We are now arguing upon a moot point, as to the interpretation of this law. The Judges in Westminster-hall shall interpret. No one House can; it must be the two Houses.

I will either put in or leave out "your Highness," which

* Commissioners of the Great Seal. † Probably Serjeant Wylde.

the gentlemen please. It is said there must be two Houses. I would ask any man that wears a gown, who shall call them? Undoubtedly the Chief Magistrate has power by law to do it. His Highness, in his lifetime, did execute that power. He did design and call the persons, which, as much as that requires, is personal still. Then come successors, in all other places, when it mentions supplies to that House. There was no need of successors in the other articles.

Now to the persons, civil and military men.

1. It is not entailed upon them, neither successors of the seal. I take the persons now in place to be thorough-paced. They have gone thoroughly with you.

I am very willing that those of the old Lords that have been faithful be taken in. My motion is that you will transact.

*Mr. Annesley.* If it be yielded that the Petition and Advice is a law, and without dispute, then there is an end of the debate; but that was never yet yielded. Many arguments against it are not answered. I am sorry we have forgot the beginning of the debate, when the current opinion was, if not to restore, yet not to prejudice the old Peers.

I doubt the expedient offered will not hinder the excluding of the old Lords. I think your time will be well spent to state this business clearly.

I have that to say which I was not willing to have done, if things had gone on in a moderate way. But, whatever is upon my spirit to say, I shall not fear to speak and I think it my duty not to forbear, whatever be the issue, and though I am satisfied I can never bring the sense of the House to mine, and was unwilling, but Mr. Attorney-general called me up. I shall revert to the beginning of the debate.

My many bonds and relations will not allow me to bar the rights of the old peerage. How far the Lords adventured themselves in the late war, how they assisted you in all your straits, how far they hazarded their lives in calling the late Parliament, you have been already informed. What laws, customs, and prescriptions, there are for them, to give them power to sit. What protestations, vows, covenants, solemn

leagues, and declarations of Parliament, for the preservation of their privileges:* one, 17th of April, 46, ordered to be hung up in all churches, setting forth your obligation to maintain their rights! If now, after all this, they must be laid aside, being thus settled, without ever being heard, my soul shall have no share in such counsels and such a resolution. I know no law against them, but the law which I abhor to think of. We know under what impressions they were, that took them away. The law punisheth them for not coming thither; and yet they must not come. There are places assigned them by law, to sit in; and yet they must not sit. No law without consent of the Lords in Parliament is good, but void. Lord Coke is clear that no law is of force but what is made by the three estates.

An expedient hath been offered for them with a salvo; but that will not serve the turn, to say we give them a liberty to sit, or be admitted, and yet to put such shackles upon them as they cannot in honour sit. It is but nugatory thus to put the Petition and Advice upon them. If not, let us say the laws of God and man are of no force in that point.

It is objected against them,

1. That it is contrary to reason, that there should be an hereditary judicial power in them.

I wish such new reason may not proceed from our new lights. Practice and experience many hundred years, show the reasonableness of them.

2. It is objected that the Peers sat at first upon account of their ancient possessions, and their great proprieties and estates.

And have they not so still, or if they have not, what have they that sit there? I could name five or six of the ancient Peers that are not disabled from sitting; that have estates and interests equivalent to buy out all that sit there now.

3. It is objected that they are considerable enough already. What security that their greatness may not be our danger?

* See *supra*, pp. 518, 519.

This is an argument not fit to be answered with less than 20,000 men.

4. It is objected that there is a House already in possession.

But to say they sit by a law, is begging the question. If that be so, the controversy is at an end. That objection was waved yesterday, and is now made again.

I am much troubled what to say in the whole. I can say I am plain-hearted and single-hearted. I am not for those prudential ways of weighing conveniency, to do our duty. Something of the innocence of the dove, and a little simplicity of the gospel will better become this House, than all the politic prudence in the world.

But you may say you wonder what I drive at. Shall we meet and do nothing? shall we leave all things in confusion, if we come not to settlement? I am sensible you are under straits every way; should this question pass as is proposed, all your work is done, but money. If this question should pass in the negative; then your next question may be, for the old nobility; the old other House. If that be carried in the negative too, then you must either usurp the same power we have so much decried, and shamefully retract your vote for two Houses, or else do nought.

But what then shall we do? For a week together, it hath puzzled the wisdom of this House. It is our duty to do things that may tend to a settlement. If we could avoid the owning of this House, without endangering our interest abroad, I would it were set aside. I hope the major part are not against the right of the old Peerage.

This vote going alone, is much more dangerous than if it go as part of that Bill, and it is fit that Bill should be the first thing that passes.

When things are in some measure stated, and this is passed, then the first transaction may be, to carry up your Bill to the persons now sitting.

There is a necessity to go on in business. You cannot do without transacting. It signifies no more than trafficking, trading, or bargaining, and the better bargain you make, the

better for the people. Therefore, in order to the juncture of present affairs, I would make as good a bargain as I can.

As additions to that question, I shall offer,

That in respect of the present constitution or juncture of affairs, this House will transact with the persons called by writ, and now sitting in the other House; not intending hereby to exclude such of the ancient Peers who have been faithful to the Commonwealth, from their privileges of being summoned, and sitting members of that House.

*Mr. Disbrowe.* Stood up to speak to the question*.

I being called out at twelve, could not stay to hear the end of the debate. Divers others, it seems, spoke to the question, and to the additions offered; but the House rose without a question, having sat till two, and adjourned the debate and the House till Friday morning.

Resolved, that all Committees shall sit, notwithstanding the adjournment.

Resolved, that Mr. Duckett have leave to go into the country for fourteen days.

Serjeant Maynard being chosen for Newtown and other Boroughs, made his election for Newtown, and new writs ordered to issue out for the other two places.†

* "Disbrowe. Much of our settlement consists in that which lies before us. When we have such a settlement once founded upon righteousness and justice, that will stand. Greatness will do no good, but a great man thrown into the gap may stop it better, if he will stand to it, but goodness and greatness together is better." *Goddard MS.* p. 274.

† "H. H. London, March 1, 1658. To Lord Henry Cromwell, Lord Lieutenant of Ireland:—

"The Parliament newes stands thus, as I am informed. Last Thursday, after a debate of sixteen hours, the House sitting till twelve of the clock at night, the speedy preparing of a navye to sett out to sea, for the security of the Commonwealth, and preservation of the commerce and trade thereof in the Baltick Sea, was referred to his Highnesse, (the Councell being allowed no share therein, nor suffered to be named in the House,) but with a caution of keeping a good correspondency betweene us and other allyes, and saveing the right of the militia in the Parliament.

"The same day, Portman was discharged, and the Lifetenant of the Towre (to whome they will not allow the title of Lord,) check for his

The Committee of Grievances sat, and heard several Petitions, and heard Counsel between Long and Edwards about the Roll's Office in Chancery, where Lady Jermine offered her title above them both; but hers was waved till the other was tried. It was held by divers, to be improper for the Committee to meddle with it, being depending and remediable at law, but it was notwithstanding retained: an ill precedent.

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*Thursday, March* 3, 1658-9.

The House was adjourned, with a saving to the sitting of all Committees, and that the Committee of Grievances should sit till twelve in the forenoon.

They sat accordingly in the House,

*Colonel Terrill* in the chair.

They read the Petition of the Beer-brewers against the Excise, and appointed it a day for hearing, as also several other Petitions.

The most part of the day was spent in hearing counsel at the bar, upon Long and Edwards's business, about Long's claim to the Register's Office in Chancery; and put the further hearing of it till next meeting; as also to hear the claim of Lady Jermine, who it seems has a better title than either of the others.

The Committee of Privileges sat in the afternoon till eight at night, in hearing the business of Petersfield, which was recommitted.

illegall (as they called it) imprisonment. Saturday, yesterday, and this day, in the debate of the other Howse. But, in this grand affayre, the House is much divided, some being for the old Peeres only, some for the new Lords only, and others for both together; while the Commonwealth partye sett still, resolveing to give theyr vote to the greatest disadvantage of his Highnesse. Nothing being yet resolved, the further debate is adjourned till to-morrow.

"This I accidentally gleaned up, and resolve to give it you, though contrary to my natural inclination, which affects not to meddle with state affaires. *Nam quæ supra, nihil ad nos*, has been my opinion." See "*Thurloe State Papers*," vii. 626.

Counsel being heard on both sides; it was resolved *nemine contradicente*, that the freeholders had a right equal with the burgagers to elect burgesses, so that it was carried for Mr. Cole.

I came late, so know not what other business passed that day.*

* "Captain Langley to Secretary Thurloe. Leith, March 3, 1658-9. "Here are severall bookes sent downe, one entitled the *Leveller*; another, the *Good Ould Cause*, and some other, whose names I have not. I question not, but that your Lordshipp hath hard and seene of them, soe that I shall not need to say any more, then that they are of dangerose consequence as to ——— and all the partie are extremely taken with them. I can tell you, when need requires, how they come handed heather, and who writes the goaud intelligence, out of the House to the A. B. when you think good to make use of it; but I am not willing to commit too much to—(it may bee the miscarryinge of a packitt.) You little think how the newes for passing the vote for recognision of his Highness troubled the A. B. and other of, &c. soe that they are freted to the very galle, and the House of Loords ads much to the sorow; yett they hope for a helpe at last, but few can desearne this; for 'tis order by the —— that all bee caried plausibly as to the outward. I speak nothing but one sure knowledge; therefore believe me, the A. B. and those of the vanting crew, are your two antagonists, throughout the whole. But that might have been helped long since: pardon mee, Sir, I could tell you how 'tis sed, that one partie is for the other House to consist of the ould Lords, and another of the new; and that the third, hering the debats, smiles in silence at you boath: these they title, the ould statist, with many such-like passages, which pleaseth very much; and how they will ——— you a ——— at last. I must not inlarge in these." See "*Thurloe State Papers*," vii. 627.

END OF VOL. III.

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